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REPORT OF THE AD HOC WORKING GROUP OF EXPERTS
PREPARED IN ACCORDANCE WITH RESOLUTION 7 (XXVII)
OF THE COMMISSION ON HUMAN RIGHTS

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INTRODUCTION

A. Mandate and composition of the Ad Hoc Working Group of Experts

1. Background and present mandate of the Ad Hoc Working Group of Experts

1. It will be recalled that the mandate of the Ad Hoc Working Group of Experts, established under resolution 2 (XXIII) of the Commission on Human Rights of 6 March 1967, has been successively enlarged and extended by various resolutions of the Commission, namely resolutions 2(XXIV), 21(XXV), and 8(XXVI). In accordance with these resolutions, the Working Group has submitted to the Commission four reports on the treatment of political prisoners and other questions relating to human rights in southern Africa and African Territories under Portuguese administration (E/CN.4/950, E/CN.4/984 and Add.1-19, E/CN.4/1020 and Add.1-3, E/CN.4/1050 and Corr.1).

2. At its twenty-seventh session the Commission on Human Rights, in resolution 7 (XXVII) of 8 March 1971, decided that the Working Group should continue surveying the developments in the areas and fields mentioned in paragraph 3 (i) to (iv) of Commission resolution 2 (XXIV) and in paragraph 3 of Commission resolution 21 (XXV) with particular reference to grave manifestations of colonialism and racial discrimination present in the situation prevailing in Namibia, Southern Rhodesia, Angola, Mozambique and Guinea (Bissau), resulting from the actions of the illegal South African régime in Namibia, the illegal minority régime in Southern Rhodesia and the Portuguese régime in Angola, Mozambique and Guinea (Bissau). The Commission further requested the Working Group to bring new developments in the above-mentioned field to the attention of the Commission at its twenty-eighth session and to submit a report, including conclusions and recommendations, to the Commission at its twenty-ninth session.

3. In accordance with resolution 7 (XXVII) of the Commission, the Working Group submitted to the twenty-eighth session of the Commission a report (E/CN.4/1076) bringing to the attention of the Commission new developments in the above-mentioned field. The present report, containing further information on new developments in that field and the Working Group's conclusions and recommendations, has been drawn up in accordance with the same resolution.

4. It should be pointed out that since 1967 the Working Group has been carrying out concurrently a series of investigations concerning the enjoyment of trade unions' rights and related questions in southern Africa and in African Territories under Portuguese administration in accordance with resolutions 1216 (XLII), 1302 (XLIV), 1412 (XLVI), 1509 (XLVIII) and 1599 (L) of the Economic and Social Council. As requested by Council resolution 1599 (L), the Working Group conducted in 1972 a thorough investigation of the system of recruitment of African workers in those regions and will report on the matter to the Council at its fifty-fourth session. Furthermore, it may be recalled that the Working Group submitted to the Commission at its twenty-eighth session a study on the question of apartheid from the point of view of international penal law (E/CN.4/1075), which it had been requested to undertake by resolution 8 (XXVI) of the Commission.

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2. Composition of the Ad Hoc Working Group of Experts

5. The members of the Ad Hoc Working Group of Experts, appointed by the Chairman of the Commission on Human Rights in accordance with resolutions 2 (XXIII) and 2 (XXIV) of the Commission, are the following:

Mr. Ibrahima Boye, Ambassador of Senegal to the Soviet Union, Chairman;
Mr. Branimir Janković, Professor of International Law, Belgrade University, Yugoslavia, Vice-Chairman;
Mr. Felix Ermacora, Professor of Public Law, University of Vienna, and Member of Parliament, Austria;
Mr. A.S. Mani, First Secretary, Permanent Mission of India to the United Nations;
Mr. Luis Marchand-Stens, Ministry of Foreign Affairs, Peru;
Mr. Mahmud N. Rattansey, Counsellor, Embassy of the United Republic of Tanzania, Paris.

B. Organization of work and procedures adopted by the
Ad Hoc Working Group of Experts

1. Meetings, officers and secretariat of the Ad Hoc Working Group of Experts

6. At a series of meetings held at United Nations Headquarters in New York in February and March 1972, the Working Group organized its work and planned the field mission to Europe and Africa, which it later undertook during the months of July and August 1972, for the purpose of receiving evidence and hearing testimony concerning recent developments in matters falling within its terms of reference.

7. In the course of its field mission the Working Group heard witnesses in London (31 July and 1 August 1972), Geneva (4 August 1972), Nairobi (7 August 1972), Dar es Salaam (9-11 August 1972), Lusaka (14 and 15 August 1972), Brazzaville (17 and 18 August 1972) and Kinshasa (21-23 August 1972). The Working Group later held a series of meetings at the United Nations Office at Geneva, from 15 January to 2 February 1972, to consider and adopt its reports to the Commission on Human Rights and the Economic and Social Council. The records of testimony taken at public meetings are to be found in documents E/CN.4/AC.22/RT.127 to 143 and 145 to 146.

8. Mr. Ibrahima Boye (Senegal), continued as Chairman-Rapporteur, and Mr. Branimir Janković (Yugoslavia) as Vice-Chairman.

9. At the meetings in New York, Mr. Edward Lawson, Deputy Director of the Division of Human Rights represented the Secretary-General, and Mr. İlhan Lütem, Special Assistant, Division of Human Rights, acted as Secretary. During the Working Group's Mission To Europe and Africa, from 31 July to 23 August 1972, Mr. Henri Mazaud, Special Assistant, Division of Human Rights, acted as Principal Secretary and Mr. Christo Tepavitcharov, Division of Human Rights, acted as Assistant Principal Secretary. At the meetings in Geneva from 17 to 26 January 1973, Mr. Lawson acted as Principal Secretary and Mr. Tepavitcharov as Secretary.

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2. Conduct of the investigation

10. As in the case of its previous investigations, the Working Group sought the co-operation of Member States and of competent organizations and individuals with a view to hearing the greatest possible number of witnesses and receiving relevant written information on the matters referred to in resolution 7 (XXVII) of the Commission on Human Rights. The steps taken by the Working Group for that purpose are set forth below:

(a) Correspondence with Governments of Member States

11. On 7 March 1972, the Chairman of the Ad Hoc Working Group of Experts sent a letter to the Ministers for Foreign Affairs of Guinea, the People's Republic of the Congo, Portugal, the Republic of South Africa, Senegal, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, Zaire and Zambia, informing them of the mandate of the Working Group and inviting the co-operation of their Governments. They were requested in particular to transmit any information relating to matters within the terms of reference of the Working Group, including names and addresses of persons or organizations who could wish to furnish such information, either orally or in writing, to the Working Group. On 20 July 1972, the Secretary-General, on behalf of the Working Group, sent a similar note verbale to the Minister for Foreign Affairs of Kenya.

12. The Governments of Senegal and of the United Republic of Tanzania expressly offered their co-operation to the Working Group.

13. On 12 December 1972, the Working Group communicated for comments to the Government of Portugal certain information it had received in the course of its investigation concerning the fate of certain political prisoners and freedom-fighters arrested or captured by the Portuguese authorities.

(b) Relations with the Organization of African Unity

14. In a letter dated 18 May 1972, the Director of the Division of Human Rights, at the request of the Working Group, informed the Administrative Secretary-General of the Organization of African Unity of the mandate of the Working Group and invited that Organization to continue to extend its co-operation to the Working Group, in particular by communicating any relevant information including names and addresses of persons who might be prepared to furnish such information either orally or in writing.

(c) Correspondence with non-governmental organizations and individuals

15. In a letter dated 16 February 1972, the Deputy Director of the Division of Human Rights, at the request of the Working Group, brought the mandate of the Working Group to the attention of the various non-governmental organizations concerned about human rights in southern Africa and African Territories under Portuguese administration, particularly the many African liberation movements which had co-operated with the Working Group in its previous investigations.

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The organizations were requested to communicate any relevant information, including names and addresses of witnesses. A further letter confirming the objectives and interest of the Working Group was addressed to those organizations on 23 May 1972. The names of most of the witnesses heard by the Group were communicated by those organizations. At the request of the Working Group the Division of Human Rights sent a letter to Father Luis Alfonso da Costa, missionari comboniani, Rome, who in reply submitted written testimony.

(d) Testimony heard

16. In 1972, the Working Group heard a total of 68 witnesses on the matters dealt with in resolution 7 (XXVII) of the Commission on Human Rights. One of the witnesses was heard at a closed meeting at his request. The list of all the witnesses who gave evidence at public meetings, divided according to the countries or territories about which they spoke, is given below. It will be noted that two of the witnesses gave evidence about more than one country or territory. The names of persons who gave evidence about the system of recruitment of African workers and related matters are marked with an asterisk.

(i) The Republic of South Africa

17. Seventeen witnesses were heard. One of them gave evidence at a closed meeting. The 16 witnesses who gave evidence at public meetings were the following: The Reverend Wilfred Jackson (RT.127, London); Mr. David Sibeko (RT.128, London); Mr. Quentin Jacobsen (RT.129, London); The Very Rev. Gonville ffrench-Beytagh (RT.130, London); Mr. Martin Ennals (RT.130, London); Mr. Hugh F. Lewin (RT.130, London); Mr. George Mbele (RT.130, London); Mr. N. Valticos* (RT.131, Geneva); Mr. Joe Kuzwayo (RT.132, Nairobi); Mr. Teophilus M. Bidi (RT.133, Dar es Salaam); Mr. Elias L. Ntloedibi (RT.133, Dar es Salaam); Mr. Cyprian Manyanda (RT.135, Dar es Salaam); Mr. Nathaniel Honono (RT.137, Lusaka); Mr. Lennox Diliza Lande (RT.137, Lusaka); Miss Edna Mgabaza (RT.138, Lusaka); Mr. Duma Nokwe (RT.138, Lusaka).

(ii) Namibia

18. The following 11 witnesses gave evidence at public meetings: Msgr. Colin Winter (RT.129, London); Mr. Martin Ennals (RT.130, London); Mr. N. Valticos* (RT.131, Geneva); Mr. Jackson Kambode* (RT.132, Nairobi); Mr. Aaron Shindjoba (RT.132, Nairobi); Mr. Karuete Shapumba Illonga* (RT.132, Nairobi); Mr. Andreas Shipanga (RT.134, Dar es Salaam); Mr. Moses Garoeb (RT.138, Lusaka); Mr. Peter Nanyemba (RT.138, Lusaka); Mr. Solomon Mifima (RT.138, Lusaka); Mr. Jesaya Nyamu (RT.138, Lusaka).

(iii) Southern Rhodesia

19. The following 10 witnesses gave evidence at public meetings: Miss Judith Todd (RT.127, London); Mr. Guy Clutton-Brock (RT.128, London); Mr. Michael Mawema* (RT.128 and 129, London); Mr. Jacob Moyo (RT.129, London); Mr. Herbert Musikavanu (RT.129, London); Mr. Martin Ennals (RT.130, London); Mr. N. Valticos* (RT.131, Geneva); Mr. Attwell Bokwe* (RT.138, Lusaka); Mr. Richard G. Hove* (RT.139, Lusaka); Mr. Washington Malianga* (RT.139, Lusaka);

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(iv) Angola

20. The following 26 witnesses gave evidence at public meetings:

Mr. Martin Ennals (RT.130, London); Mr. N. Valticos* (RT.131, Geneva); Mr. Pascal Luvualu* (RT.139, Lusaka); Mr. Paulo Jorge* (RT.139, Lusaka); Mr. Makuna Iwonyo (RT.139, Lusaka); Mr. Lumeu Chikulu (RT.139, Lusaka); Mr. Yata Nsamba (RT.139, Lusaka); Commandant Joao Jacob Caetano (RT.140 and 141, Brazzaville); Mr. Muila Mavungo (RT.140, Brazzaville); Mr. Luiz Sebastiao Mateus (RT.140, Brazzaville); Mr. Tomas Manuel (RT.140, Brazzaville); Mr. Cesar Armando* (RT.140, Brazzaville); Mr. Mario de Andrade (RT.141, Brazzaville); Mr. Sebastien Lubaki (RT.142, Kinshasa); Mr. Samuel Abrigada (RT.142, Kinshasa); Mr. Jose Adao Gomes* (RT.142, Kinshasa); Mr. Manuel Miranda (RT.143, Kinshasa); Mr. Antonio Martins (RT.143, Kinshasa); Mrs. Marta Fernandes de Brito (RT.143, Kinshasa); Mr. Joao Ngonga (RT.143, Kinshasa); Mr. Pedro Vida Garcia* (RT.143, Kinshasa); Mr. Domingo Sebastiao Sobrinho* (RT.143, Kinshasa); Dr. Sebastiao Roberto (RT.145, Kinshasa); Mr. François Lele (RT.146, Kinshasa); Mr. Joseph Panda (RT.146, Kinshasa); Mr. Louis Kiala (RT.146, Kinshasa).

(v) Mozambique

21. The following 11 witnesses gave evidence at public meetings: Mr. Martin Ennals (RT.130, London); Mr. N. Valticos* (RT.131, Geneva); Mr. Joaquim Chissano (RT.135, Dar es Salaam); Mr. Jose Ngolombe (RT.135, Dar es Salaam); Mr. Corneliu Conforme Chauque (RT.135, Dar es Salaam); Miss Mariana Matola (RT.136, Dar es Salaam); Mr. Silvestre Mueda (RT.136, Dar es Salaam); Mr. Ernesto Njolomola (RT.136, Dar es Salaam); Mr. Faustino Kambeu (RT.138, Lusaka); Mr. Absalom Bahule (RT.138, Lusaka); Mr. Jack Ntundumula (RT.138, Lusaka).

22. Each witness, after stating his name, age and profession, was invited to take an oath or to make a solemn declaration. The two formulas proposed were the following:

"I swear to tell the truth, the whole truth, and nothing but the truth"

or

"I solemnly declare, in all honour and conscience, that I will tell the truth, the whole truth, and nothing but the truth".

The Chairman explained to each witness the purpose of the investigation that the Working Group was conducting and asked him if he wished to make a statement. After hearing the witness's statement, each member of the Working Group was given an opportunity to ask questions. In some cases, the witness neither spoke nor understood any of the working languages of the United Nations, in which case the Group had recourse to the services of locally recruited interpreters. These interpreters either took an oath or solemnly declared that they would do their utmost to interpret accurately the statements made at the meetings.

23. In addition to the oral evidence, the Working Group received a number of written communications dealing with various matters within its mandate.

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24. In Zaire, the Working Group visited a hospital located in an Angolese refugee camp in the vicinity of Kinshasa, where it heard sick refugees and wounded freedom fighters coming from the interior of Angola.

25. On 7 August 1972, at the beginning of its meeting in Nairobi, the Working Group heard a statement by Mr. Don-Nanjira, representative of the Government of Kenya, (RT.132). On 9 August 1972 at its first meeting in Dar es Salaam, the Working Group was addressed by Mr. Elinewinga, Minister of Water Development and Power, acting Minister for Foreign Affairs of the United Republic of Tanzania, (RT.133). For the speech delivered by Mr. Elinewinga, as well as the statement made by the Chairman of the Working Group, (see Annex I).

26. On 17 August 1972, during its stay in Brazzaville, the Working Group was addressed by the Acting Minister for Foreign Affairs, of the Peoples' Republic of the Congo, Mr. Ndengue, (see Annex II).

27. On 23 August 1972, during its stay in Kinshasa, the Working Group was addressed by the Minister for Foreign Affairs of the Republic of Zaire, Mr. Karl-I-Bond Nguza, (see Annex III).

28. The Working Group had intended to visit Senegal, including the Casamance region, to hear further evidence concerning the situation in Guinea (Bissau) but was unable to do so.

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I. INTERNATIONAL STANDARDS RELEVANT TO THE QUESTIONS MENTIONED IN
RESOLUTION 7 (XXVII) OF THE COMMISSION ON HUMAN RIGHTS

29. These international standards - conventions, declarations and some resolutions of the General Assembly - have been quoted or summarized in the earlier reports of the Working Group, particularly in its 1970 report (E/CN.4/1020, paras. 31-70). In view of the detailed information given in that report, and in the absence of any important developments in this respect since 1970, these standards will be mentioned only briefly here. The basic standards governing all activities of the Working Group are those of the United Nations Charter (in particular Article 1 (3), Article 2 (2), Articles 55 and 56) and the general provisions of the Universal Declaration of Human Rights (articles 2 and 7), the International Convention on the Elimination of All Forms of Racial Discrimination (articles 2 and 3) and the Covenants (article 2 (2) of the Covenant on Economic, Social and Cultural Rights; article 2 (1) of the Covenant on Civil and Political Rights). All of these provisions prohibit any discrimination, and particularly any racial discrimination.

A. Standards relating to capital punishment

30. The Working Group took the following standards into particular account:

Universal Declaration of Human Rights, article 3;

Convention on the Elimination of All Forms of Racial Discrimination,
article 5;

Covenant on Civil and Political Rights, articles 6, 14, and 15;

The relevant provisions of the four Geneva Conventions of 12 August 1949 (see document E/CN.4/1020, paras. 40 and 41);

The relevant resolutions of the General Assembly and the Security Council.

B. Standards relating to the treatment of political
prisoners and captured freedom-fighters

31. Reference is made to the following standards:

Universal Declaration of Human Rights, articles 3, 5, 6, 7, 8, 9 and 10;

International Convention on the Elimination of All Forms of Racial
Discrimination, article 5 (a) and (b);

International Covenant on Civil and Political Rights, articles 7, 9 and 10;

The Standard Minimum Rules for the Treatment of Prisoners, approved by the
Economic and Social Council in resolution 663 C (XXIV) of 31 July 1957;

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The relevant provisions of the four Geneva Conventions of 12 August 1949 (see document E/CN.4/1020, paras. 45 and 46);

General Assembly resolution 2674 (XXV) on respect for human rights in armed conflicts.

C. Standards relating to the condition of Africans
in the "reserves" and "transit camps"

1. Residence and movement of persons

32. Account has been taken, in particular, of the Universal Declaration of Human Rights (article 13), of the International Convention on the Elimination of All Forms of Racial Discrimination (article 5) and of the Covenant on Civil and Political Rights (articles 4 and 12).

2. Right not to be arbitrarily deprived of property

33. The following standards, in particular, have been considered relevant: article 17 of the Universal Declaration; article 1 (2) of the two Covenants relating to human rights; General Assembly resolution 1803 (XVII).

3. Freedom of expression, assembly and association,
and the right to take part in public affairs

34. Reference is made in particular to articles 19, 20 and 21 of the Universal Declaration, article 5 (d) (viii) and (ix) of the International Convention on the Elimination of All Forms of Racial Discrimination and articles 19, 21, 22 and 25 of the Covenant on Civil and Political Rights.

4. Rights relating to work; prohibition of forced labour

35. Account has been taken, in particular, of article 23 of the Universal Declaration, ILO Convention No. 105 of the Abolition of Forced Labour, ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation, article 5 (e) (i) of the International Convention on the Elimination of All Forms of Racial Discrimination and articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

5. Right to an adequate standard of living,
including food, clothing and housing

36. The standards considered were article 25 of the Universal Declaration, article 25 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination and article 11 of the Covenant on Economic, Social and Cultural Rights.

6. Rights relating to health

37. Reference is made to article 25 of the Universal Declaration, article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination and article 12 of the Covenant on Economic, Social and Cultural Rights.

7. Rights relating to education

38. Account has been taken, in particular, of article 26 of the Universal Declaration, the UNESCO Convention Against Discrimination in Education, article 5 (e) (v) and (vi) of the International Convention on the Elimination of All Forms of Racial Discrimination and articles 13 and 15 of the Covenant on Economic, Social and Cultural Rights.

D. Relevant standards in relation to the grave manifestations of apartheid in South Africa and the grave manifestations of colonialism and racial discrimination in Namibia, Southern Rhodesia and the African Territories under Portuguese domination

39. Without prejudice to other provisions (see the preceding section C), special attention has been given to article 6 of the charter of the International Military Tribunal of Nürnberg (General Assembly resolution 96 (I)), the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (in particular articles I, II, III and IV), articles 129 and 130 of the Geneva Convention of 12 August 1949 on the Treatment of Prisoners of War and articles 146 and 147 of the Geneva Convention on the Protection of Civilian Persons in Time of War, as also article I and II of the 1968 International Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the recommendations of the Teheran Conference which were adopted by the General Assembly (in particular, Conference resolution VIII).

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II. SOUTH AFRICA

A. CAPITAL PUNISHMENT

1. Reference to some relevant laws

40. The South African laws in force which provide for the death penalty were reproduced or analysed in a preceding report of the Working Group (E/CN.4/1020, paras. 73-81) and in earlier documents for general distribution.

41. It will be recalled that the number of offences carrying the death penalty has been increased considerably since 1950. It is also a fact that the number of executions of persons condemned to death is substantially higher in South Africa than in any other country of the world.

42. It will be recalled, in particular, that two laws directed against persons who oppose the policy of apartheid, namely the General Law Amendment Act (1962) (the so-called "Sabotage Act") 1/ and the Terrorism Act (1967) 2/ provide for the death penalty for certain offences. As explained in a preceding report of the Working Group (E/CN.4/1020, paras. 75 and 76), under the 1962 "Sabotage Act" some relatively minor offences were transformed into the offence of sabotage and became liable to the penalties for treason, including the death penalty, if they were calculated to produce any of a series of effects listed in the Act. These effects were often defined very vaguely, covering, for example, any act designed to "embarrass the administration of the affairs of the State" (section 2(2)(j)). The burden of proving that the alleged offence was not calculated to produce any of such effects falls on the accused (section 2(2)). It was also pointed out (E/CN.4/1020, para. 77) that several of the procedural provisions of the "Sabotage Act" were not in harmony with the relevant international standards of the Universal Declaration and the Covenant on Civil and Political Rights or with the generally accepted principles with regard to offences liable to the death

1/ Reproduced in extenso in document E/CN.4/AC.22/6, annex IV.

2/ Reproduced in extenso in the first report of the Working Group, E/CN.4/950, annex IV.

penalty; for example, the Act provides for summary trial without preliminary investigation, the judge cannot give a suspended sentence, and persons acquitted of the crime of "sabotage" may be arraigned on any other charge arising out of the same alleged acts.

43. Under the Terrorism Act (1967) any person who commits any act with intent to "endanger the maintenance of law and order in the Republic" shall be guilty of terrorism in certain circumstances and liable to the penalties provided for treason, including the death penalty. The prosecution must prove that the act in question was likely to have any of several effects, including to "embarrass the administration of the affairs of the State". As in the "Sabotage Act" the burden of proof of innocence falls upon the accused. The Act was made retroactive for five years (section 9(1)) contrary to the provisions of the Universal Declaration and the Covenant, and that procedural provisions similar to those of the "Sabotage Act" appeared in the Terrorism Act (see paragraph 42 above).

2. Analysis of the information and evidence received by the Ad Hoc Working Group of Experts

(a) Information concerning sentences and executions ordered by judicial decision

44. The preceding report of the Working Group (E/CN.4/1050, paragraphs 48-50) reproduced and analysed statistical material emanating from the annual report of the Prisons Department dated 30 June 1970, which stated that during the period 1 July 1968 to 30 June 1969 the number of death sentences passed was 107 and the number of persons executed was 84. The 107 persons sentenced to death in this period was additional to 59 others who had been sentenced before 1 July 1968 but had not been executed at that time. Thus the total number of persons sentenced to death who were in prison in 1968-1969 amounted to 166.

45. From information available to the Working Group, 80 persons were hanged in South Africa in the year ending 30 June 1970. ^{3/} This was stated to be 30 per cent less than in the preceding 12 months. This figure was among statistics in the annual report of the Commissioner of Prisons tabled in Parliament on 25 March 1971 and it represented the first significant decline in executions since World War II. During the year under review, 28 people sentenced to death had their sentences commuted, three won appeals and two were granted retrials. On 30 June 1970 there were 47 prisoners awaiting execution. Almost all were African. The Report of the Commissioner of Prisons for the period 1 July 1970 to 30 June 1971 ^{4/} disclosed that in this period 100 prisoners sentenced to the death penalty were admitted to prison. These comprised 68 Africans (two of them women); 28 Coloureds, 3 Whites and 1 Asian. As on 30 June 1971, 41 prisoners under sentence of death were in custody.

^{3/} The Times, London, 26 April 1971.

^{4/} RP 101/71, Government Printer, Pretoria.

46. Regarding the fact that the statistics show that the persons executed are for the most part Africans, this racial aspect of death sentences passed by the courts was drawn attention to by three prominent South African barristers ^{5/} who were to have given evidence at the trial during 1970 of Dr. Barend van Niekerk, who was charged with contempt of court following the publication of an article in the South African Law Journal on death sentences. ^{6/} Dr. van Niekerk was acquitted before the defence had completed its case. Following this, Acta Juridica, a journal issued by the law faculty of the University of Cape Town, published the defence argument. The barristers, Mr. Rex Welsh, Q.C., Mr. Sidney Kentridge, Q.C. and Mr. C. Plewman stated that there was "positive proof" that between 1947 and 1969 more than 120 non-whites were sentenced to death for rape. In the same period the death sentence was imposed on only three white persons. Yet in the period 1947 to 1966, 288 whites were convicted of the rape of non-white women, whereas 844 non-whites were convicted of the rape of white women. "It is clear therefore", the statement said, "that the death sentence figures bear no relation to the figures for charges or conviction. It is this discrepancy which requires explanation". It was pointed out that in this period none of the 283 whites was sentenced to death for rape, but 121 non-whites were given the death sentence. These figures, as of those dealing with murder sentences, "cry out for a thorough investigation of the racial aspects of the death sentence" and that this could be explained "only on the hypothesis of a deliberate sentencing policy".

47. Mr. Ennals drew attention (RT.130, page 30) to the high incidence of capital punishment in South Africa, which was almost exclusively directed toward the African population. Mr. Lewin (RT.130, pages 77, 87-92) stated that for eight months in 1966 he had been among the white political prisoners confined at Central Prison in Pretoria, which was "the hanging prison" where all executions were carried out. All prisoners sentenced to death were brought to that prison. The condemned section of the prison was the only part where the races were kept together, though in separate cells for whites and Africans. This was until the beginning of 1970 when a completely new "hanging gaol" was built behind Central Prison. That meant that the scenes he had witnessed in 1966 were now seen only by the condemned themselves. Every week during the period the witness was in the prison, upwards of 100 prisoners were awaiting final sentence or the outcome of appeals. He had passed the notice board in the main hall where the figures were displayed. Each morning prisoners on their way from their cells to the prison workshops had to pass a wall with a small door on the right of which stood the tall gallows building with the morgue beside it, and twice a week the prisoners were usually kept waiting sometimes for as long as half an hour while a knocking sound came from the other side of the wall. This, it transpired, was the sound of nails being knocked into the coffins of those just executed. This was generally on Tuesdays and Thursdays. Often there was sawdust on the paving over which the prisoners walked, and sometimes the sawdust was not effective and there was blood there. The witness described (page 91) the instance when a woman screaming in agony was carried along the courtyard outside his cell window. He learned

^{5/} Guardian, 9 August 1971.

^{6/} Referred to in E/CN.4/1050 para. 54. See also South African Law Journal November 1969 and February 1970.

subsequently that this was a young mother who had been condemned to death for smothering her child and who had been brought from the women's gaol in a straitjacket to be hanged. The witness commented in his testimony (page 96) on the effect the executions had on not only the rest of the prisoners but on the warders. He cited the instance of a young warder who had attended his first execution of five prisoners and who commented that he had never realized that there was so much blood. One of those executed had the skin of his face pulled off completely by the rope as he fell. The witness commented that the violence of capital punishment had effects on and implications for the whole society.

(b) Alleged violations of the right to life

48. The preceding Report of the Working Group (E/CN.4/1050, para. 59) recorded information about the deaths of 16 political prisoners in suspicious circumstances. The Group wishes to record that it received evidence of further such instances, notably the following cases:

(a) Mr. Ahmed Timol who was detained under the Terrorism Act on 22 October 1971 and who died on 27 October after a fall from the 10th floor of Security Police headquarters;

(b) Mr. Mthayeni Cutshela who was detained on 21 December 1970 in connexion with the trial of members of the Unity Movement and who died after extensive interrogation;

(c) Mr. Moffat Qusane, stated by a witness (Mr. Bidi, RT.133, page 31) to have died, allegedly from suicide, after a long period of detention in the hands of the South African authorities to whom he was handed by the Portuguese Government in Mozambique.

More information on these three cases will be found in the following section.

B. TREATMENT OF POLITICAL PRISONERS
AND CAPTURED FREEDOM-FIGHTERS

1. Reference to some relevant laws

49. Many laws adopted since 1950 authorize the detention, both before trial and after the judicial decision, of persons suspected or convicted of having engaged in activities running counter to the policy of apartheid. All these laws have been reproduced in extenso or in extracts in earlier documents for general distribution. The laws which authorize the detention of persons suspected of a political offence or even of knowledge of such offence, together with information about the operation of these laws, are dealt with fully in the report of the Special Committee on Apartheid (A/8770 of 26 September 1972), which has been transmitted to the Commission on Human Rights in accordance with General Assembly resolution 2923 A (XXVII).

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50. A common feature of the Suppression of Communism Act, No. 44 of 1950, as amended, the General Law Amendment, No. 76 of 1962 (the so-called "Sabotage Act") 7/ and the Terrorism Act, (No. 83 of 1967 8/ is that they provide for sentences of imprisonment in respect of very broadly defined political offences.

51. The laws which provide for the detention of persons without indictment and without trial are: Section 17 of the General Law Amendment Act, No. 37 of 1963 (the "90-day law" which was superseded by the "180-day law"); Section 215 bis of the Criminal Procedure Act No. 96 of 1965 (the "180-day law"); Section 22 of the General Law Amendment Act, No. 62 of 1966; 9/ Section 6 of the Terrorism Act, No. 83 of 1967; and also Proclamation 400 of 1960 which prevails in the Transkei. This proclamation was imposed in 1960 during the Transkei "emergency" but has remained a permanent feature of the law. It provides inter alia for the indefinite detention without trial (see A/8770, paras. 60-61).

52. During 1971 the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, No. 41 of 1971 was passed, authorizing detention without trial of any person suspected of withholding information concerning possession of or trafficking in drugs "until he has satisfactorily replied to all questions" (Section 13). Detainees may be held incommunicado.

53. It will be recalled that the General Law Amendment Act of 30 June 1969, the so-called "Boss Law", was analysed in previous reports (see E/CN.4/1020, paras. 101-105 and E/CN.4/1050, paras. 68-69). In accordance with section 29 of the Act, no person shall be permitted to give evidence in a court of law - even, apparently, to defend his own case in criminal proceedings - on any matter which the Prime Minister, or persons authorized by him certifies will affect the interests of the state or public security. Following the commission of inquiry set up in September 1969 to study the law (see E/CN.4/1050, para. 70), the Government passed the General Laws Amendment Act, 1972 which, by amending clause 10 required that a person committing an offence in terms of the Official Secrets Act must knowingly do so; and by amending clause 29 required an affidavit instead of a certificate by the Minister responsible where evidence is withheld from a court on state security grounds. The same law amended the Transkei Constitution Act, 1963, section 7 by transferring control of the police in the Transkei, excluding the white areas, to the Government of the Transkei; and the Bantu Laws Amendment Act, 1972 transferred control of Transkei prisons to the Transkei Government. The Government also promulgated the Security Intelligence and State Security Council Act, No. 64 of 1972. 10/ This measure defined the functions of

7/ See document E/CN.4/AC.22/6.

8/ See document E/CN.4/950, annex IV.

9/ Section 22 authorized any commissioned police officer to detain a suspect without warrant for 14 days and such further periods as a judge of the Supreme Court might from time to time determine. The clause was apparently meant for the detention of persons in Namibia where the "90-day" and "180-day" laws did not apply. It has been little used, as the Terrorism Act was enacted the following year.

10/ Government Gazette, 14 June 1972, No. 3554.

the Bureau of State Security and provided for a State Security Council, whose functions are to "formulate national policy and strategy in relation to the security of the Republic and the manner in which such policy or strategy should be implemented and executed". This measure omitted three crucial recommendations made by the commission of inquiry into the security system which involved narrowing the terms of the General Laws Amendment Act dealing with the publication of matters relating to state security. 11/ One of these matters relating to the prevention of certain evidence being given in court was included in the provisions of the General Laws Amendment Act, 1972, see above.

54. Persons sentenced to imprisonment, and with certain exceptions, those detained before trial, come under the Prisons Act, No. 8 of 1959 as amended, 12/ and the regulations adopted in accordance with that law. 13/ It will be recalled in particular that section 23(1)(b) of the Prisons Act provides for the separation of white and non-white prisoners, and that section 36 authorizes corporal punishment. Sections 103, 104 and 110 of the regulations include provisions for complaints and requests of prisoners, family relationships and visits by judges and magistrates. The Prisons Amendment Act, No. 9 of 1971 14/ provided for the decentralization of prison boards (section 1); but also amended the punishments imposed on prisoners for contraventions of the prison regulations (clause 5). The previous regulations limited solitary confinement in an isolation cell to six days with spare diet and to 15 days with light labour. This has been changed to provide for solitary confinement in an isolation cell, together with dietary punishment, for a period "not exceeding thirty days". The period of punishment together with the diet prescribed is now regulated by law (section 5(b)(ii)). Strong objections to the extension of the period of solitary confinement were voiced in the House of Assembly by Mrs. Helen Suzman M.P., but the measure was passed unamended none the less. 15/

55. As recorded in the preceding report of the Group (E/CN.4/1050) large numbers of Africans are arrested and imprisoned for offences under the "pass laws", in particular the Bantu (Abolition of Passes and Co-ordination of Documents) Act of 1952 as amended; the Bantu (Urban Areas) Consolidation Act of 1945, as amended; and under the laws on Bantu labour, in particular the Bantu Labour Regulations of 1965, and the Bantu Labour Regulations (Bantu Areas) of 1968. 16/ In June 1971 the Deputy Minister of Bantu Administration announced that the Government intended to introduce a new system of dealing with pass offenders, through "aid centres" and homeland "rehabilitation centres". Provision for this system was made in the Bantu Laws Amendment Act, No. 42 of 1964, Section 12. Several "aid centres" have been established and others are to follow. The aid centres would attempt to "legalize" the position of technical offenders by liaising with their employers, the local

11/ The Times, London, 17 May 1972.

12/ See document E/CN.4/AC.22/6, annex V.

13/ Ibid., annex IV.

14/ Government Gazette, No. 3031 of 24 March 1971.

15/ House of Assembly Debates (Hansard) 2, cols. 430-437; 489-494.

16/ See documents E/4559, paragraphs 83, 84 and E/4791, paragraphs 43, 44.

labour bureau or the "homeland" authority; if their position could be "legalized" they would not have to go to prison but if not they would be gaoled or sent to "rehabilitation centres". 17/

2. Analysis of the information and evidence received

(a) Information concerning the treatment of captured freedom-fighters

56. Several witnesses, including Mr. Bidi (RT.133, pages 29-31, page 67); Mr. Sibeko (RT.128, pages 71-75); and Mr. Ennals (RT.130, page 132), together with a subsequent written communication to the Group dated 3 August 1972 gave testimony about captured freedom-fighters who were handed over to the South African police by the Portuguese authorities of Mozambique during 1968. The three were Marcus Mokgotle, Sidney Mbuyazwe and Moffat Qusana, all members of the Pan-Africanist Congress captured while on their way to South Africa. Mr. Ennals (RT.130, page 32) said that Mokgotle and Mbuyazwe had subsequently been State witnesses at the trial of six members of the Pan-Africanist Congress held in Orange Free State in 1971. Mr. Ennals (RT.130, page 32) told the Working Group that the Special Committee on Apartheid had been asked to look into these cases on the grounds that the Portuguese authorities had violated the International Convention on the Status of Refugees. The Pan-Africanist Congress had urged that these men be handed over to the Red Cross for repatriation to Tanzania where they had been offered political asylum. Contrary to South African Government denials that these men were in the country, Mr. Ennals enclosed a photostat copy of the first three pages of the official court record of the trial of six men in the Supreme Court, Orange Free State Division, which cited Marcus Mogatele (sic) as a state witness. Mr. Sibeko (RT.128, page 96) said those forced to become State witnesses in the Welkom case were subjected to electrical torture among other torture methods. Mr. Bidi (RT.133, pages 31, 67) said that since December 1971 when he was in police custody there had been no news of the whereabouts of Sidney Mbuyazwe, and that it was said that Qusane was dead, the official explanation being that he had committed suicide.

(b) Deaths of political prisoners in suspicious circumstances

57. Reference was made in the last two preceding reports of the Working Group (E/CN.4/1020, paras. 96 and 146-153, and E/CN.4/1050, paras. 59-60 and 80-86) concerning the death of a number of political detainees since 1963, in circumstances which may be considered suspicious. The names of the deceased of whom the Working Group had knowledge were as follows:

Mr. 'Looksmart' Solwandle Ngudle, "found hanging in his cell" on 5 September 1963;

Mr. Suliman Saloojee, who died on 9 September 1962 after falling from the seventh floor of Security Headquarters where he was being interrogated;

17/ See Survey of Race Relations, 1971, op. cit., pages 143-144.

Mr. James Tyitya, "found hanging in his cell" in January 1964;
Mr. Leong Yum Pin, the same official finding (19 November 1966);
Mr. James Hamakwayo, the same official finding (precise date unknown);
Mr. Ah Yan, the same official finding (5 January 1967);
Mr. Alpheus Maliba, the same official finding (1967, precise date unknown);
Mr. J. B. Tubakwe, the same official finding (11 September 1968);
Mr. Nichodimus Kgoatle, who died of "bronchial pneumonia" (4 February 1969);
Mr. Solomon Modibane, who died of "natural causes" (28 February 1969);
Mr. James Lenkoe (10 March 1969);
Mr. Caleb Mayekiso, same official finding (1 June 1969);
Mr. Sijso Ginenishe (July 1969);
Imam Hadj Abdullah Haron (27 September 1969);
Mr. Michael Shivute, arrested on 16 June 1969 under the Terrorism Act and who died in the night of 16/17 June 1969. The Government declared that he had committed suicide;
Mr. Jacob Monakgotla, a member of the Bakubung tribe, charged under the Terrorism Act who died on 9 September 1969, the day before the opening of the trial. The medical expert said his death was due to a thrombosis. No inquest was held.

58. It will be recalled that the circumstances of the death of Imam Haroun as revealed during the inquest had given rise to protests and a request, submitted by a member of the House of Assembly on 15 March 1970 that a new and impartial investigation should be held at a high level into the circumstances surrounding the death of the Imam. It was announced that the police were making further investigations. On 30 September 1970 it was stated that these new investigations had not brought to light any facts that could justify the opening of proceedings.

59. Written evidence brought by the International Defence and Aid Fund (The Terrorism of Torture by Hilda Bernstein, London, April 1972) indicated that nineteen persons held under detention laws since 1963 had died in detention. A list of the names, the date of detention, date of death and officially reported causes of death is given as an appendix to the publication. The name of Mr. Sijso Ginenishe cited in paragraph 18 above is not included. The list contains four additional names, including those of Mr. Ahmed Timol and Mr. Mthayeni Cutshela on both of whom the Working Group received evidence, see passages below, and also the names of Mr. Bellington Mampe, date of detention unknown, date of death

/...

1 September 1963, cause of death "unknown", and Mr. Hangula Shonyeka, detained on 26 August 1966, date of death unknown, cause "suicide by hanging" according to evidence given in a trial under the Terrorism Act. 18/

60. In addition to the persons listed, 11 of whom the Government has alleged to have committed suicide, at least two persons died during detention under Proclamation R400 in the Transkei. 19/ These were Nogeni Gaga and Pongoloshu Hoyo, who died on 7 May 1965 and 8 May 1965 respectively, according to information supplied by the Minister of Police. Both were said to have died of "natural causes". In addition, testimony taken by the Working Group referred to yet another case, that of Mr. Moffat Qusana, also alleged to have died after being taken into detention (see paragraph 63 below).

61. Evidence on the death of Mr. Mthayeni Cutshela was given by Mr. Honono (RT.137, page 11) and was confirmed by the written evidence of Miss E. D. M. Wilcox and the International Defence and Aid Fund. It was stated that Mr. Cutshela, aged 68, had been taken from his home in Bizana three times for questioning. More than once he was taken to the Mkambathi forest where the police had established an encampment to which detainees under interrogation were brought. Several co-detainees who were subsequently among the 13 members of the Unity Movement brought to trial (see paragraph 66 below) had sworn affidavits about his treatment at the hands of the police. These recorded consistent torture, including constant beating and electric shock treatment. Cutshela, according to these deponents, suffered pitifully during his stay in the camp. After he could not get up one morning he was taken away. He subsequently died in a cell of Umtata Prison. His body was delivered to his son in a sealed coffin. The death certificate, the son said, was kept by the police. Miss Wilcox's evidence said that an inquest into the death was at first refused by a Magistrate. After further legal representations it was held and found that Cutshela had died of natural causes, namely brain haemorrhage.

62. The case of Ahmed Timol was referred to in the written evidence of the Pan-Africanist Congress (page 8), the All Africa Trade Union Federation (page 13) and the International Defence and Aid Fund (pages 1-3). This indicated that Mr. Timol, a school teacher, was detained under the Terrorism Act on 22 October 1971. He died on 27 October after a fall from the tenth floor of the

18/ Bellington Mampe who died in Worcester jail in the Western Cape Province had been awaiting trial for six months and was the first man to die in "90-day" detention. Hangula Shonyeka was detained in Pretoria prison under the "180-day" law on 30 August 1966 and committed suicide on 10 October 1966 according to the Minister of Police answering a question in the House of Assembly on 8 September 1970. See Apartheid is Built on Torture, published by the Information Centre of the World Peace Council, Helsinki, pages 24, 27. According to this booklet Ephraim Kamati Kaporo one of the accused in the Namibian Terrorism Trial was taken ill during the course of the hearing to hospital where he died on 12 October 1967. The death certificate gave cause of death as "natural causes".

19/ House of Assembly Debates (Hansard), 2, 11 February 1972, col. 164.

Security Police headquarters in Johannesburg. 20/ The Security Police claimed he had committed suicide. An inquest held after a delay of several weeks disclosed that he had been interrogated by several members of the Security Police and was in the process of being interrogated on the day of his death. Results of the post mortem examination had shown several injuries sustained between three and ten days before death. The magistrate found on 22 June 1972 that Mr. Timol had committed suicide and that no one was to blame for his death.

63. Mr. Bidi (RT.133, page 67) said in evidence that Mr. Moffat Qusana, one of three captured freedom-fighters handed over to the South African police by the Portuguese authorities in Mozambique during 1968 had been reported dead, allegedly as a result of suicide. There has been no official statement about this case.

64. Lastly, it may be noted that according to information revealed in the House of Assembly, South African policemen shot to death 54 people and wounded a further 149 during 1970. In a number of cases, the Working Group was unable to obtain information showing that the Government of South Africa had held an inquest as a result of the suspicious deaths of persons referred to in the Working Group's reports. However, the Minister of Police of South Africa, in answer to a series of questions tabled, released details of cases involving four policemen who were convicted of crimes of violence during the year and were allowed to remain in the force. They had been convicted of crimes ranging from assault to attempted murder, but had been found suitable by a departmental inquiry to remain in the service. 21/ During 1971 it was revealed that a total of 191 policemen had been convicted of common assault. A further 20 had been convicted of assault with intent to do grievous bodily harm and three of culpable homicide. Of the policemen convicted of common assault, 27 had previous convictions. 22/ Of those found guilty with intent, three had previous convictions. It is doubtful that these statistics include persons detained by the Security Police for interrogation before their indictment by a magistrate and before they entered prison.

(c) Information concerning the number of political prisoners and detainees and some recent trials

65. Information about detentions and trials during 1970 and 1971 for offences under the security laws is to be found in the report of the Special Committee on Apartheid (A/8770). The Working Group was presented with evidence about a number of these trials, among them (i) the trial under the Terrorism Act of 13 leading members

20/ See also Report of the Special Committee on Apartheid, "Maltreatment and Torture of Prisoners in South Africa", A/8770, paras. 579-583.

21/ Star, Johannesburg, 13 March 1971.

22/ Rand Daily Mail, Johannesburg, 11 March 1972.

of the Unity Movement of South Africa held at Pietermaritzburg; (ii) the trial of six members of the Pan-Africanist Congress at Welkom in the Orange Free State; and (iii) the trial of the Dean of Johannesburg. Allegations of torture and ill-treatment of accused persons and detained witnesses have been made in connexion with these trials and section (d) of this chapter will revert to this subject.

(i) The Unity Movement Trial^{23/}

66. Mr. Honono (RT.137, pages 7-21) referred to the trial under the Terrorism Act of 13 leading members of the Unity Movement of South Africa, during which the defence had highlighted "diabolical" tortures of the accused. This trial had lasted a year from April 1971 to April 1972 and an appeal was still pending. It had demonstrated the heavy onus placed on the accused by the Terrorism Act to prove their innocence as well as the helplessness of the judges to protect the fundamental right of individuals to a fair trial and the blatant intervention of the Minister of Police during the progress of the trial. The witness emphasized that despite that Lt. Col. Swanepoel, the chief Security Branch investigator in the case, said in his evidence under oath that he considered the present legislation to combat "terrorism and communism" was "inadequate under the present situation".

67. The evidence of Mr. Honono together with that of Miss Wilcox (written memorandum) detailed the methods of police interrogation used in this trial. Miss Wilcox stated that by the time the case closed 100 witnesses had given evidence for the State. The great majority had been held in detention or custody until their turn to give evidence, some for longer than a year. During the cross-examination of one of the accused, the state prosecutor had said: "I suggest to you that there were at least 140 detainees that passed through the camp". This number of 140 did not take into account detentions in the urban areas and other country towns.

68. The 13 accused were sentenced on 6 April 1972 to terms of imprisonment ranging from five to eight years for contraventions of the Terrorism Act. The State opposed bail to six of the accused pending appeal. The trial of Mr. Joseph Tshukudu Maleka, the fourteenth accused whose trial was subsequently separated from the rest is still pending. ^{24/}

(ii) The "Welkom" Trial^{25/}

69. Mr. Sibeko (RT.128, page 66) referred to the fact that five of the six Africans accused of being members of the unlawful Pan-Africanist Congress and of

^{23/} See also A/8770, paras. 530-537.

^{24/} Rand Daily Mail, 29 July 1971.

^{25/} See A/8770, paras. 577-579.

carrying on the activities of the movement by organizing youths to undergo military training, had had their convictions confirmed on appeal. The accused persons had been arrested in May 1971. It had been reported at the time that 140 Africans from Welkom had been taken into custody at the same time and attempts to obtain information about the nature of charges to be preferred had drawn blanks (pages 67-70).

(iii) The Trial of the Dean of Johannesburg

70. The Reverend French-Beytagh, former Anglican Dean of Johannesburg (RT.130, pages 3-27), testified about his trial under the Terrorism Act during which he had been found guilty on three of ten counts, namely using money from the Defence and Aid Fund to aid political prisoners, inciting the organization known as the Black Sash to violence, and inciting a man called Kenneth Jordaan, a state witness, to violence. He was sentenced to five years' imprisonment, the minimum sentence under the Act, but the verdict was subsequently reversed by the Appeal Court. The appeal had taken from 2 November 1971 to 15 April 1972 and he had left South Africa immediately afterwards for fear of re-detention. The Reverend French-Beytagh's comments on his treatment while under detention are quoted in the relevant sections of this report.

71. According to information available to the Working Group, in a trial under the Terrorism Act, James Edward April, a coloured man, was tried and found guilty in the Pietermaritzburg Supreme Court on 10 April 1971 and was sentenced to 15 years' imprisonment. He was tried on three counts: (1) that between June 1961 and February 1971 as a member of the African National Congress and Umkonto We Sizwe he had been trained in "communism, warfare, guerilla warfare, methods of revolution, propaganda and methods of secret communication with intent to endanger the maintenance of law and order in the Republic", (2) that between 2 August and 30 August 1967 he had entered Rhodesia bearing arms and had taken part in armed fighting with the "intention of getting through to arrange and take part in armed revolution of the Republic"; (3) that between 29 December 1970 and 17 February he had entered the country with a forged passport and falsified documents and that he had material to establish a system of secret communication. All three counts were taken as one for purpose of sentence, and he was found not guilty on the third count. Addressing the court April said "people in despair will always resort to violence", and there would be an "eventual victory of the African people over the fascist South African government" 26/

72. Information available to the Working Group indicates that a trial commenced in Pretoria on 13 June 1972 of four Indians - one a woman - charged under the Terrorism Act and Suppression of Communism Act. The four are Mohammed Salim Essop

26/ Rand Daily Mail, Johannesburg, 11 May 1971.

(22), Yousef Hassan Essack (21), Indhrasen Moodley (27) and Mrs. Amina Desai (51). The three men had been in custody since October 1971 when they were among those arrested in a large police swoop. Mrs. Desai was released on R.5000 bail. The main count under the Terrorism Act alleges that they endangered the maintenance of law and order and conspired to promote the cause and the policies of either the banned South African Communist Party or the banned African National Congress. The charges mention conspiracy with Mr. Ahmed Timol, the school teacher who according to the South African police had died by falling out of a window to his death at police headquarters a few days after being detained. All four accused were sentenced to five years' imprisonment. 27/

73. A memorandum presented to the Working Group by the All Africa Trade Union Federation gave the total of 809 persons as those serving sentences of imprisonment under the country's main security laws at the end of 1969. Replying to questions in the House of Assembly on 18 May 1971, the Minister of Justice said that the numbers serving sentences of imprisonment under the security laws at 1 January 1971 were as follows:

| | <u>Whites</u> | <u>Coloureds</u> | <u>Asians</u> | <u>Africans</u> | <u>Total</u> |
|---|---------------|------------------|---------------|-----------------|--------------|
| Terrorism Act | - | - | - | 49 | 49 |
| Unlawful Organizations Act | - | - | - | 125 | 125 |
| Suppression of Communism Act | 5 | 1 | 1 | 28 | 35 |
| Section 21, General Laws Amendment Act of 1962 (sabotage) | 6 | 9 | 13 | 212 | 240 |
| | <u>11</u> | <u>10</u> | <u>14</u> | <u>514</u> | <u>449</u> |

As at January 1972 the following were serving sentences under the same laws: 28/

| | <u>Whites</u> | <u>Coloureds</u> | <u>Asians</u> | <u>Africans</u> | <u>Total</u> |
|---|---------------|------------------|---------------|-----------------|--------------|
| Terrorism Act | - | 1 | - | 50 | 51 |
| Unlawful Organizations Act | - | - | - | 109 | 109 |
| Suppression of Communism Act | 4 | 1 | 1 | 23 | 29 |
| Section 21, General Laws Amendment Act of 1962 (sabotage) | 5 | 9 | 13 | 248 | 275 |
| | <u>9</u> | <u>11</u> | <u>14</u> | <u>430</u> | <u>464</u> |

27/ Star, Johannesburg, 1 November 1972.

28/ House of Assembly Debates (Hansard), 25 February 1972, question 4.

74. Some figures, not necessarily complete, are available on those detained under the laws which provide for detention without charge or trial. While both the Minister of Justice and the Minister of Police several times refused to supply information about the numbers detained for indefinite periods under section 6 of the Terrorism Act, 29/ it is known that numbers were detained under this measure during 1971. In May it was disclosed that of the 16 persons charged under the Terrorism Act during 1971, 14 had been convicted and two found not guilty. 30/ One of those subsequently acquitted had been detained for 160 days. 31/ Of those detained under the Terrorism Act in this period 37 of the 47 detained were subsequently released, though a number of these appeared as state witnesses. 32/

75. Under section 215 bis of the Criminal Procedure Act, which provides for the detention of potential state witnesses until the conclusions of the criminal proceedings, or for up to 180 days, 25 warrants were issued during 1971 and 12 during the first three months of 1972. 33/

76. According to the Minister of Police, 37 Africans were detained under the emergency regulations for the Transkei (Proclamation 400) during the period 1 July 1970 to 31 March 1971. 34/ Since April 1971 six persons have been detained under the same proclamation. 35/

(d) Allegations regarding the torture and cruel, inhuman or degrading treatment of detainees and political prisoners

77. The Group received evidence relating to the treatment of detainees, i.e. political arrestees detained without trial or prior to being brought before a court to face specified charges; and political prisoners sentenced under one or more of the statutes mentioned in paragraph 73 above and detained in a regular prison institution.

29/ See, for instance, House of Assembly Debates (Hansard), 4 February 1972, reply to question 18, and again on 11 February 1972.

30/ House of Assembly Debates (Hansard), 9 May 1972, question 4.

31/ Rand Daily Mail, 10 May 1972.

32/ Rand Daily Mail, 19 April 1972.

33/ House of Assembly Debates, (Hansard), 5 May 1972, question 535.

34/ House of Assembly Debates, (Hansard), 2 April 1971, col. 679.

35/ House of Assembly Debates, (Hansard), 18 February 1972, question 231.

78. Three witnesses who had themselves been detained for purposes of interrogation prior to their trials gave testimony. Mr. Lewin (RT.130, pages 101-102) described being subjected to the "statue torture" during which he was forced to stand on one spot for 24 hours. A fortnight later he was subjected to assaults at the headquarters of the Security Police. He supplied a list of Security policemen who had mistreated prisoners. The Rev. French-Beytagh (RT.130, pages 3, 12 and 23) said he had been detained in Security Police headquarters for eight days only, due to the intervention of the British consul. During interrogation sessions he was not physically hurt but he was psychologically shocked. Mr. Jacobsen (RT.129, pages 27-60) ^{36/} said he had been subjected to periods of non-stop interrogation, on two occasions for 48 hours at a stretch and once for 72 hours. He was in solitary confinement throughout his detention (RT.129, pages 27 and 37). He was also subjected to the "statue torture". About a month after his detention he attempted suicide. He had access to his lawyer only when charges were preferred.

79. A written communication from Mr. Max Katz dated 20 July 1972 described his arrest and detention on 18 November 1972 and his solitary confinement for three weeks. He was removed from Pretoria Central Prison to the Security Branch headquarters in Compol Buildings, Pretoria for six days' interrogation without any sleep. The interrogation was conducted by eight members of the Security Branch, who worked in pairs for shifts of four hours each. The object of the interrogation was to force him to give evidence about his political activities and those of his friends. He was released on 23 December. He had also been detained under similar circumstances during 1966.

80. Much of the evidence referred to the torture of accused and witnesses in the trial of the Unity Movement. This included the testimony of Mr. Honono (RT.137 pages 7-11) together with news reports of evidence and defence submissions made during the trial, the written submissions by Miss E. Wilcox, and the booklet on the use of torture submitted by the International Defence and Aid Fund referred to above in paragraph 20. The burden of defence allegations made during the trial was that the Security Police had set up a torture camp in the Mkambathi forest to extract statements from detainees, some of whom had subsequently appeared as accused and others as state witnesses. It transpired during the cross-examination of one of the accused that at least 140 detainees had passed through the camp. Gwendolyn and Alfred Wilcox had been held incommunicado for almost nine months and then simply released. Apart from the death of Mthayeni Cutshela in detention two men had attempted suicide, Jakhede Nohlaza, aged 68, during his detention and an accused Mogami Josiah Moeng during the trial. Miss Wilcox's memorandum cited 10 instances of torture. One was the case of Josiah Mogami Moeng who was handcuffed with his hands round a tree trunk above his head, where he was whipped and beaten almost continuously for three days and nights while the police attempted to get a statement from him. Pindiso Zimambane

^{36/} See also A/8770, paras. 595-7.

was handcuffed, his feet manacled and clips attached to his ears. He heard a whirring sound and felt painful sensations. This was repeated many times until he could no longer feel the sharp pain but merely felt his body convulsing and a sensation of something gripping him all over the upper part of his body. After the clips were taken from his ears, his arm was handcuffed to the branch of a tree above his head, and he was left thus the whole night. Next morning he was released but handcuffed to another tree and told to call when he decided to speak more. It rained during the second night. He was also assaulted and had a dart stuck into his leg. Some time later he was blindfolded and tied to the ground. He felt someone undoing his trouser buttons and felt a painful needle-pricking sensation down his spine and up from his private parts. He could not say how long this lasted, but he could not sleep afterwards. Every now and again he would involuntarily jump up and hit his head on the roof of the van where he was put to sleep at night.

81. Mr. Sibeko (RT.128, page 96) drew attention to the torture of the accused in the Welkom trial, as well as of men who subsequently gave evidence for the State. He was of the opinion that the methods of torture were decidedly worse than in the past (pages 107-111).

82. Miss Mgabaza (RT.138, pages 31-32) presented evidence on the experiences of Mrs. F.E. Majola at the hands of the Security Branch in May 1969, and on other occasions. During a search of her house police searched her six year old daughter under her armpits. Miss Mgabaza also handed the Group a document prepared by the Women's International Democratic Federation which included testimonies by Mrs. R. V. Nzo whose husband was detained in solitary confinement for 237 days, and Mrs. A. N. Ngakane, née Lutuli, whose husband was detained under the Transkei emergency regulations and was a convicted prisoner on Robben Island for 33 months.

(e) Information concerning the organization of the prison service and the ill-treatment of prisoners under sentence

83. Several witnesses, among them Mr. George Mbele (RT.130, pages 116-142), Mr. Lewin, (RT.130, pages 78-81 and 103), Mr. Ennals (RT.130, pages 54-55), Mr. Honono (RT.137, page 12) and Mr. Ntloedibe (RT.133, pages 56-60) gave evidence of the organization of the prison system and the treatment of convicted prisoners.

84. Mr. Mbele's testimony (RT.130, pages 116-142 supplemented by a written memorandum) was based on a transcript of a tape-recorded interview made by a prisoner recently released after a number of years on Robben Island. His name and identifying details were withheld because of the nature of the Prisons Act which, said Mr. Mbele, placed conditions in prison beyond public scrutiny. Mr. Mbele said that after 1963 the prison system was reorganized. This followed several hunger strikes by political prisoners caused by the treatment they received in contravention of prison regulations. Until this time prisoners in

the various categories D to A had been in corresponding D to A camps; after this it became policy to confine most non-white political prisoners on Robben Island. ^{37/}

85. Information concerning Robben Island indicated that several groups of prisoners were kept segregated. The Namibians were in strict segregation from all the other prisoners; the Pietermaritzburg prisoners were separately confined; and the Rivonia group including Nelson Mandela were living in a special section of the prison, each in a single cell. One prisoner, Benjamin Ramotse, who was arrested in Botswana and handed over to the South African police, was in solitary confinement and had been since his commitment to the prison island. Mr. Mbele emphasized that according to his information conditions on Robben Island had sharply deteriorated since December 1970. From that date the Department of Prisons had embarked upon a harsh new policy of deprivations and provocations (RT.130, page 126). As a result there were a number of demotions of prisoners from higher categories to lower with a corresponding degrading of their conditions and a loss in privileges. This had culminated in a prisoners' hunger strike in March 1971. Mr. Mbele also gave details of assaults on the prisoners as well as the food; study and recreation facilities. Whereas conditions had improved slightly at one stage, there had been a sharp deterioration since 1970 (RT.130, page 137).

86. Mr. Honono (RT.137, page 12) drew attention to conditions in the Ntosasa prison in the Transkei used for some of the detainees who subsequently appeared as state witnesses in the Pietermaritzburg trial of Unity Movement members. ^{38/} Mr. Honono said these prison conditions were not confined to Ntosasa but were general in the rural areas.

87. Mr. Ntloedibe (RT.133, pages 56-7) described the hard labour in a prison to which he was committed (the prison was not named); the humiliating body searches of the prisoners and the beatings inflicted by warders; and the conditions under which prisoners had to receive visitors. He also described his experience of three months' punishment confinement on rice water. The invariable hospital treatment regardless of the complaint was castor oil. Mr. Ntloedibe said the standard minimum rules for the treatment of prisoners were not adhered to for African or other non-white prisoners. Mr. Ennals (RT.130, pages 54-55) confirmed this and said South Africa was in flagrant infraction of the rules it claimed to follow.

88. Mr. Lewin (RT.130, page 78) said his experience was that improvements had taken place in recent years largely as a result of the exposure of prison conditions by Harold Strachan after his release in 1965, and after the removal of white political prisoners to a new prison in Pretoria. But political

^{37/} On the traded categories of prisoners see A/8770, paragraph 599 and foot-note 186.

^{38/} References to conditions in this prison were reported in East London Daily Dispatch, 29 September 1971 and 7 October 1971.

prisoners remained isolated from the other prison inmates; their letter and visiting facilities were inferior to those of ordinary prisoners; and while ordinary prisoners were given remission and parole and were frequently subject to amnesty, this was denied the political prisoners.

89. Evidence by Mr. Ntloedibe (RT.133, page 61) and Mr. Kuzwayo (RT.132, pages 46-50, 67-90, 92-6) and Mr. Bidi (RT.133, pages 33-48) outlined the workings of some of the "pass laws" in controlling labour. According to these witnesses the white farmers can obtain the labour of prisoners by paying a ridiculously low fee to the prison authorities. These witnesses also disclosed that the treatment meted out to them by the white farmers was unsatisfactory and that living and working conditions were inhuman and sometimes worse than in prisons. Mr. Kuzwayo (RT.132, pages 87-90, 92) referred also to government farm colonies to which recidivist prisoners were sent.

90. Questioned in the House of Assembly about the numbers of prisoners hired out to employers, the Minister of Prisons said statistics were not readily available so it was not practicable to supply the required information. 39/

91. Attention was once again drawn during 1972 to the large numbers of prisoners confined for infringements of petty laws and regulations. A judge of the Supreme Court commented that the criminal justice system cried out for reform. He was commenting on the fact that 92 per cent of the people in prison were there for six months or less. 40/ The report of the Commissioner of Prisons for the period 1 July 1970 to 30 June 1971 41/ indicated that during this period 474,065 sentenced (and 273,844 unsentenced) prisoners were admitted to prisons. Of the 475,065 sentenced prisoners, 433,954 served sentences of under six months.

92. In June 1971 the Deputy Minister of Bantu Administration announced that the government intended to introduce a new system of dealing with "pass" offenders through "aid centres" and homeland "rehabilitation centres". Provision for the system was made in the Bantu Laws Amendment Act, No. 42 of 1964, Section 12. The statement said that the system envisaged was a genuine attempt to "reduce" the burden on the technical offender and to divert the majority of these offenders away from the courts and the prisons". If the position of offenders could be "legalized" through liaison with employers, the local labour bureau or the homeland authority they would not have to go to gaol, but if not, they would be gaoled or sent to "rehabilitation centres". 42/ At the time of the passage of this legislation fears were expressed that centres might become a source of cheap labour for employers who could not attract workers by normal means. Aid centres might reduce the number of short-term pass offenders "but this will only be because

39/ House of Assembly Debates (Hansard) 4 February 1972, question 20.

40/ Rand Daily Mail, Johannesburg, 27 July 1972.

41/ RP.101/71.

42/ Survey of Race Relations 1971, op cit., pages 143-144. See also Second Bantu Laws Amendment Act, No. 30, 1972.

instead of going to prison the people will be taken to the homelands or rural areas and placed in employment where there is a shortage of labour, especially on white farms". ^{43/} Some information about the working of these aid centres became available during the 1972 session of the House of Assembly. It was disclosed, for instance, that the Johannesburg aid centres had dealt with 10,098 cases since 1 January 1972, but of these only 52 had been placed in employment. ^{44/} Of 36,619 cases referred to the aid centres at Welkom 27,800 persons were sentenced to prison. ^{45/} The Deputy Minister for Bantu Administration and Development said that "the laws in regard to influx and other so-called restrictive laws for maintaining the necessary order with regard to this matter, are remaining in operation". ^{46/}

(f) Allegations concerning violations of the right of the accused to a fair trial, and procedures for complaints and redress

93. Much of the evidence focussed on the violation of the rights of detainees and of prisoners brought to trial. Mr. Honono stressed that under the Terrorism Act the onus was shifted on to the accused to prove his innocence (RT.137, page 33). He also pointed out that there were no rights of Habeas corpus. Mr. Bidi (RT.133, page 31) cited the cases of Marcus Mokgotle and Sidney Mbuyazwe who were still in police custody fully four years after their arrest without trial or access to legal aid.

94. Several witnesses emphasized the effects on trial procedures of the use of state witnesses who had themselves been held in detention incommunicado. Mr. Honono (RT.137, page 16) cited the comments of Mr. Edgar Lockwood who had observed the Unity Movement trial in Pietermaritzburg. These were to the effect that the trial illustrated the new weapons which the Terrorism Act placed in the hands of the prosecution. The defence was deprived of any knowledge of what the witnesses for the State would say in advance of the trial. There were no summary pre-trials in these cases. All the important witnesses had been held in detention for varying lengths of time. While in confinement they had no recourse to a lawyer nor any right to see a magistrate or to let anyone else in the outside world know how they were being treated. A feature of these trials was the carefully prepared testimony of those who have been through the interrogation process and the fact that during the witnesses' evidence there were present in

^{43/} Ibid.

^{44/} House of Assembly Debates (Hansard), 28 March 1972, question 451.

^{45/} House of Assembly Debates (Hansard) 9 February 1972, col. 687.

^{46/} Ibid.

court four or five of the police inquisitors including the man who had obtained the witnesses' written statement when he had been a prisoner. This was confirmed by Mr. Lande (RT.137, pages 18-20), who instanced the case of two witnesses who were threatened with perjury because they complained of police ill-treatment and thus deviated from their prepared statements (RT.137, page 21). Miss Wilcox's memorandum said that in the Pietermaritzburg trial allegations of torture were central to the case, and a pattern of torture had emerged during the course of the trial. Complaints of assault were made shortly after charges had been laid. The Natal police stated that these complaints were being investigated but in mid-August 1971 the results of their investigation were handed to the Attorney-General of Natal to decide whether or not to prosecute the Security Police officers named. In April 1972 it was announced that the Attorney-General had decided not to prosecute but his office declined to give reasons for this decision. Nine of the accused then began proceedings to sue the Minister of Police for R.10,000 each on grounds of assault and torture. 47/

95. According to the written evidence supplementing the testimony of Mr. Honono, during the trial the accused's defence lawyer had told the court that people who had been opposed to the policies of the State had suddenly switched in favour of them. They had made statements which they believed the police wanted because of their sheer terror of detention under the Terrorism Act. He argued that the corroboration of one detainee's evidence by that of another was not sufficient. He said that the 100-odd state witnesses had been kept together in groups before they had been brought to court. 48/

96. The Rev. French-Beytagh (RT.130, pages 21, 22) said that the state's witnesses suddenly appeared in the witness box which meant there was no way in which he could have prepared his defence in advance. Mr. Jacobsen (RT.129, page 36) said the first main state witness admitted that he was terrified. He had continual headaches and had to sit throughout his three days of evidence. He spoke like a parrot. He had been in solitary confinement for almost five months.

97. Mr. Lewin (RT.130, page 107) said that his own mishandling at the hands of the Security Police was not mentioned during his trial for fear of affecting the judge's impression of his credibility. In a large number of cases lawyers had decided not to bring instances of torture into court for this reason. The Pietermaritzburg trial was one of the first instances of such testimony being produced. In that case it was rejected outright by the judge.

47/ See also Rand Daily Mail, Johannesburg, 22 August 1972.

48/ Sunday Times, Johannesburg, 2 April 1972.

98. Mr. Honono (RT.137, page 22) referred to the interference by the Minister of Police with the Pietermaritzburg trial while it was in progress and sub_judice. This was a statement which referred to "far-fetched and totally untrue evidence alleging ill-treatment by the police", which had been described in court by the defence as "an aggravated form of contempt of court and a gratuitous slur on the defence". 49/

99. Several witnesses pointed out that an increasing number of trials had been prosecuted in inaccessible rural areas. This, according to evidence given in closed session (RT.127/Add.1, pages 4-5) was an intentional act by the South African Government to make it difficult for legal defence to be provided. The Rev. ffrench-Beytagh (RT.130, page 3) said medical evidence that his trial should be held in Johannesburg near a specialist heart unit and where, in any case, the offence was committed, was turned down.

100. Mr. Sibeko (RT.128, page 71) said the defences of accused persons were often handicapped by the diminishing number of experienced lawyers caused by the persecution which they themselves faced. He also said that some trials had almost no coverage in the press which meant they escaped international scrutiny (RT.128, pages 66-70). The Rev. ffrench-Beytagh (RT.130, page 26) said he did not see his successful appeal as a vindication of South African justice. It had cost a great deal of money and he was apprehensive about the possible deterioration of judicial standards in the Appeal Court.

101. Mr. Sibeko (RT.128, page 81) drew attention to the continuing house arrest, confinement and restrictions on Mangaliso Sobukwe.

102. Mr. Ennals (RT.130, page 67) said he was in favour of conventions relating to prisoners-of-war being applied to the treatment of freedom-fighters. He stressed the close co-operation between the police forces in southern Africa, especially the Rhodesian and South African forces, and of raids into neighbouring territories to take persons wanted by the South African authorities.

C. THE CONDITIONS OF AFRICANS IN THE "NATIVE RESERVES"

1. Historical background

103. The origins of the policy of placing Africans in "native reserves" and their constitution as "Bantu Homelands" was described in some detail in the 1970 Report of the Working Group. 50/

49/ See Cape Times, Cape Town, 12 January 1972.

50/ See E/CN.4/1020 and E/CN.4/1020/Add.2.

2. Summary of legislation in force

104. The statutes which make provision for the application of the policy in the "reserves" including the Transkei were summarized in a previous report 51/ and were analysed and reproduced in documents E/CN.4/AC.22/17 and Add.1. These statutes include the Bantu Homelands Citizenship Act No. 26 of 1970, which makes every African whether or not he lives in a "homeland" a citizen of one or other territorial authority and thus an alien in the Republic, 52/ and the Bantu Education Amendment Act, No. 44 of 1970, which empowered "homeland" authorities to promulgate their own measures for the establishment and registration of schools. 53/

105. Legislation passed since the end of 1970 includes the Bantu Homelands Constitution Act, No. 21 of 1971, which enabled the Executive to set up legislative assemblies by proclamation instead of by act of parliament/as and when it was considered that such areas were ready to embark upon "self-government". Under the terms of this Act, the Government has rapidly set up assemblies and executive councils (the latter consisting principally of chiefs) and has established public services for the various "homelands". The type of authority varies slightly from one "homeland" to another. The Transkei now has a Legislative Assembly and has been a "self-governing area" from December 1963. Territorial authorities, an earlier stage, were set up in 1961 for the Ciskei, Tswanaland, Lebowa, Venda and Machagana authorities. One for the South Sotho was established in 1969, and one for the Zulus was set up in June 1970. Legislative assemblies were established for the Tswana in May 1971, although it did not achieve the same "self-governing" status as the Transkei. The same was done for the Ciskei and Venda authorities in June 1971, for the North Sotho and Machagana in July 1971, and for the South Sotho in October 1971. Zululand was finally brought into the system in April 1972. In June 1972 the Tswana homeland became a self-governing territory, on the Transkei pattern, of Bophuthatswana, and was proclaimed self-governing in September 1972. 54/

51/ See E/CN.4/1020/Add.2, pages 11-16.

52/ See the 1971 Report of the Working Group E/CN.4/1050, paragraphs 102-103.

53/ The organization of Bantu education is analysed in detail in E/CN.4/1050, paragraphs 108-119.

54/ Proclamation R 224 of 1972, Government Gazette 3666, 29 September 1972.

The Ciskei is shortly to achieve the same status, and three more, Shangaan, Venda and South Sotho, have asked for this status. ^{55/} Various acts passed by the "homeland" legislative assemblies have been duly approved by the State President and promulgated as proclamations in issues of the Government Gazette. Some instances are Proclamation R 1629 approving Act No. 4 of 1972 of the Machangana Legislative Assembly which provided for the levy of a special tax; Proclamation R 1616 approving Act No. 5 of 1972 of the Lebowa Legislative Assembly providing moneys for services; Proclamation R 1669 approving Act No. 5 of the Machangana Legislative Assembly for the establishment of a public service.

106. The Constitution Amendment Act, No. 1 of 1971, empowered the State President-in-Council to authorize by proclamation the use of an African language as an official language in addition to Afrikaans and English in any African area declared to be a self-governing territory.

107. The Bantu Affairs Administration Act No. 45 of 1971 provides for Bantu Affairs Administration Boards to supervise the affairs of Africans outside the Bantustan areas. The Boards' members are appointed by the Minister and are vested with "all the rights, powers, functions, duties and obligations" of an urban local authority in the "administration of laws and regulations affecting Africans in the white areas". In effect the Boards will take over almost all the African affairs powers and functions previously exercised by local authorities. During the debate in the House of Assembly on this measure, a Nationalist Member of Parliament revealed that the Boards would be used to speed the removal of Africans to the "homelands". ^{56/}

108. The Second Bantu Laws Amendment Act, No. 30 of 1972 provided for "aid centres" to which any African arrested or convicted of the "pass" laws may be referred (section 6 amending the Bantu Labour Act, 1964). The Bantu Affairs Commissioner of the area in which the aid centre is situated may hold a court with jurisdiction over the offence committed (section 6 (2) (a), and may "make such order as may appear to him to be just in regard to the placing in employment of such Bantu" including "the repatriation of such Bantu and his dependants to his home or last place of residence or any other place indicated by such Bantu Affairs Commissioner or officer" (section 6 (3) (b)). It was during the session of Parliament that passed this measure that the Minister of Bantu Administration and Development stated: The Bantu in the white area, whether they are born here or whether they are allowed to come here under our control laws, are here for the labour they are being allowed to perform. ^{57/}

^{55/} See Barbara Rogers, South Africa: The Bantu Homelands, International Defence and Aid Fund, London, October, 1972, page 16.

^{56/} Star, Johannesburg, 13 March 1971.

^{57/} House of Assembly Debates (Hansard), 3 February 1972, col. 295.

109. The Transkei Constitution Amendment Act, No. 31 of 1971, provides that whereas the Chief Minister will be elected by secret ballot, he will have power to appoint the other five Ministers; it also provides for the representation of a new district by its chief, thus increasing the number of chiefs in the Legislative Assembly by one. 58/ The Bantu Laws Amendment Act 1972 extended the legislative powers of the Transkei Legislative Powers to include the administration and control of prisons in the Transkei, excluding the "white" areas in the districts of Port St. Johns and Matatiele.

3. Analysis of evidence and information received

(a) Civil and political rights of Africans in the reserves

110. Mr. Bidi (RT.133, page 26 and the written memorandum of the Pan-Africanist Congress) said the policy of "separate development" was inexorably bound up with the land question. The case of the Transkei was well known: it was overcrowded, it comprised 60 per cent non-arable land and it remained, as it was created - a reservoir of cheap black labour for white South Africa's economy. The memorandum referred to the appeals by both Chief Minister Kaiser Matanzima of the Transkei "Bantustan" and Chief Gatsha Buthelezi of the Kwa-Zulu "Bantustan" for more land and an expansion of their territories, and for the seaports of Port St. Johns and Richards Bay respectively. The régime's response had been an immediate and flat refusal. "Kwa-Zulu", said the memorandum was two years old. When it was founded it was given a legislative assembly and the area was inspected by the Minister of Bantu Administration and Development for a suitable site for the "homeland's new capital. News reports had recently been to the effect that not a stone had been turned nor a dam or building constructed since the Minister's visit. Meanwhile a school building still served as the home of the legislative assembly. Furthermore, the régime refused to give Kwa-Zulu officers a free hand in decisions on matters affecting their people and territory. The same or similar situations obtained in all the designated "Bantustans".

111. The Rev. French-Beytagh said the "Bantustan" concept of independence was completely false. He adduced as evidence the fact that no attempt was being made to train men able to run independent states.

112. According to information available to the Working Group during April 1972, Paramount Chief Kaizer Matanzima tabled a motion in the Transkei Legislative Assembly to the effect that his Government would initiate talks on the independence issue but on condition that the South African Government meet his territorial demands. These were for white farming areas adjoining the Transkei, as well as the enclave of South African land surrounding Port St. Johns, the only harbour along the Transkei coast. 59/ Less than a week later the South African Prime Minister

58/ House of Assembly Debates (Hansard), 2, 1971, cols. 441-442.

59/ Guardian, 14 April 1972.

said the territorial demands of the Chief Minister of the Transkei had been rejected once and for all by the South African Cabinet. 60/

113. At the Shangaan Legislative Assembly at Giyana on 12 April 1972, Professor H. W. E. Ntsanwisi commented bitterly on the "insensitivity and inconsistency" of the Government's "homeland" policy. He said: "The black man is considered a sojourner not only in the urban areas but in the homelands as well. The homelands still belong to the central Government." 61/ In the same statement he criticized the Government's failure to produce a satisfactory settlement in a boundary dispute between the people of the Shangaan and North Sotho "homelands". Both sides had felt that white officials had only impeded their discussions and they therefore excluded them from the negotiations and produced an agreement of their own. The Government had rejected this and insisted on enforcing its own solution.

(b) Economic opportunities

114. The evidence of Mr. Bidi (RT.133, page 26) on the shortage of land and its overcrowding was relevant to the absence of economic opportunities in the "homelands". According to information available to the Working Group 62/ as a result of the growth in their population and the decline in agricultural production, these areas have actually become less able to feed themselves. In 1960 the ratio of domestic income to that earned outside the Transkei by migrant workers was 47 to 53, in 1966 this was down to 42 to 58. 63/ This made it more difficult for the "Bantustans" to absorb the growing number of Africans being repatriated from the towns. A recent study had shown that only 12 per cent of the income earned by citizens of Lebowa was earned within the "homeland". 64/

115. To the plea by Chief Lucas Mangope, Chief Minister of Bophuthatswana, that all mining taxes paid to the South African Government by mining companies in the Bantustan should be paid to his Government, 65/ the Department of Bantu Administration and Development replied that that was not possible; 66/ South Africa, as supplier of services to the territory should receive the revenue.

(c) Health and hygiene

116. The Rev. French-Beytagh (RT.130, page 6) said the fact that only approximately 10 medical men were being trained at Wentworth, the only medical school for non-Whites, meant they could not possibly staff medically the "Bantustans".

60/ Financial Times, 20 April 1972.

61/ Guardian, 14 April 1972.

62/ Merle Lipton, "Independent Bantustans?", International Affairs, vol. 48, No. 1, January 1972, pages 1-19.

63/ Financial Times, Survey, London, 22 June 1970.

64/ Eipton, op. cit.

65/ Financial Mail, 18 August 1972.

66/ Financial Mail, 25 August 1972.

(d) Education

117. The Rev. French-Beytagh (RT.130, page 6) drew attention to the Bantu Education system which offered lower levels, completely inadequate high schools and what he considered the false status of the so-called Bantu universities.

D. THE CONDITIONS OF AFRICANS IN "TRANSIT CAMPS"

1. Background information

118. The historical background of "transit camps" (or resettlement villages as they are referred to by the South African authorities) was outlined in a previous report (E/CN.4/1020/Add.2, paragraphs 65-105). As stated in paragraph 157 of the Group's 1971 report (E/CN.4/1050) those marked down for "resettlement" are (a) Africans who have been ejected from white farms, when too old or infirm to work; (b) Africans who have been cleared from "black spots"; (c) landless African families from the reserves; (d) men, women and children "endorsed out" of the urban areas as unproductive; (e) wives and families of men serving prison sentences; (f) former political prisoners, after serving their sentences.

119. Some light on the number of resettlement centres was provided during 1970 when the Minister told Parliament that there were 69 townships in the Bantu homelands in various stages of development and others (numbers not specified) still in the planning stage. 67/ According to the Department of Bantu Administration and Development, 119,619 Africans were removed from "white" areas and resettled in the Bantustans during 1969. Of these 52,128 were removed from urban areas, 44,089 from white rural areas, 23,264 from "black spots", mission farms, etc. and 138 were traders. 68/ During 1970 the Government removed 33,851 Africans from the five main urban areas to the Bantu "homelands". Of these 29,717 were men and 4,134 women. 69/

2. Summary of legislation in force

120. Previous reports have quoted the various laws authorizing the uprooting of Africans and their removal to settlement areas, among them the Bantu (Urban Areas) Consolidation Act, 1945. 70/

67/ House of Assembly Debates (Hansard), 29 September 1970, col. 5263; see E/CN.4/1050.

68/ RP. 58/1971.

69/ House of Assembly Debates (Debates), 12 February 1971, col. 179.

70/ See E/CN.4/1050, paragraphs 160-2.

3. Analysis of evidence

(a) General

121. Numbers of witnesses spoke of the degrading and dehumanizing conditions of the resettlement camps. The principal victims of the policy were African men, women and children forced out of the urban areas and so-called "black spots" within "white" areas and those regarded as "unemployable", "redundant" or "non-economically-active", such as the aged and unfit, pensioners, widows, deserted wives and mothers and unemployed youngsters between the ages of 13 and 18 (RT.133, pages 19-21). They had been dumped in the veld, some in mid-winter, with little or nothing in the way of blankets and warm clothing and had been given tents as temporary dwellings. Some had had their livestock impounded and had little or no time to prepare for their removal, so they had to subsist on government rations that fell far below their requirements (RT.113, page 21).

(b) Freedom of movement and residence

122. Mr. Ennals (RT.130, page 31) said that although resettlement was not imprisonment as such, nevertheless it was a very severe restriction and coercion. A policy of mass resettlement inflicted on the sick, the aged, on widows and women with dependent children constituted inhuman and degrading treatment and contrary to the provisions of article 9 of the Universal Declaration of Human Rights.

123. Rev. Wilfred Jackson (RT.127, pages 76-85) said he had personally been in contact with the people in the resettlement areas in his parish. That was at Limehill where the removal started in 1968 but took place mostly over the two years 1968-1969. He had seen the people loaded into trucks. They had been made to take down their own houses and were then dumped into open fields. Though the Government claimed people had been assisted to build their houses, they had not been provided with any such means. The Government claimed people had been moved in a humane manner; that was not so, and grave difficulties and injustices had been inflicted on them. The investigations of Father Cosmas Desmond had shown that the Limehill conditions were common to many other areas. By the time he left South Africa, the witness said, resettlement was still taking place and conditions were even worse than previously because of the larger numbers of people who had been moved into the resettlement camps.

124. Evidence was given by Mr. Ennals (RT.130, pages 32, 48) and a witness testifying in closed session (RT.127/Add.1 (closed) pages 6-7) about the political prisoners released from prison who had been sent to the resettlement camps, where they are unable to work to maintain their families. It was estimated that in

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recent months a hundred former political prisoners had lost even their labouring jobs in these settlements. Since January 1972, 64 additional such cases had arisen. Mr. Ennals said released prisoners were restricted to the area where they were deposited and were kept under police surveillance.

(c) Economic opportunities and employment

125. Reverend Jackson (RT.127, pages 76-77) stressed the effects of the migratory labour system on African society. In the area he knew among the Zulu people 50 per cent of the male population was at home for only three weeks to one month in the year. The removal policy was intensifying this system and its serious effects. The nearest place of work to the Limehill resettlement area was a very small town about 12 miles away that provided very little employment, and larger towns about 35 miles away already had their full complement of labour. The result was that the Government had established another labour pool in the shape of the resettlement camp, and the men had to migrate away from this area to the towns in search of work, leaving their families behind once more. It was emphasized that no work was provided in the resettlement camps (RT.127/Add.1 (closed)). Mr. Ntloedibe (RT.133, page 52) said some inmates of the resettlement areas were able to cultivate small areas of land and for the rest the Government issued rations.

126. The ration scales have been described by the Rev. David Russel in an article published in the South African Outlook in June 1971. The monthly scales are:

| | <u>Persons</u> <u>12 years and over</u> | <u>Persons</u> <u>under 12 years</u> |
|------------------|--|---|
| Mealiemeal | 20 lb. | 15 lb. |
| Mealies | 8 lb. | 4 lb. |
| Beans | 5 lb. | 2 lb. |
| Margarine | 1 lb. | 1 lb. |
| Skim milk powder | 2 lb. | 4 lb. |
| Salt | 1/2 lb | 1/4 lb. |

It will be noted that no tea, coffee, sugar, soap, fuel are included.

(d) Health, hygiene and medical services

127. Reverend Jackson (RT.127, page 77) said the effects of migratory labour were seen in the state of health of the people. His church had run five clinics in one particular area. The vast majority of the diseases they had to deal with could be covered by the term "malnutrition" or "vitamin deficiencies". Children were dying because of lack of medical services (RT.127/Add.1 (closed)). People who are pensioners and receive no family support are issued with free rations.

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E. FURTHER INVESTIGATION OF GRAVE MANIFESTATIONS
OF APARTHEID PRESENT IN THE SITUATION PREVAILING
IN THE REPUBLIC OF SOUTH AFRICA

128. It will be recalled that, in accordance with resolution 2 (XXIV) of the Commission on Human Rights, the Ad Hoc Working Group of Experts submitted to the Commission at its twenty-fifth session a report (E/CN.4/984/Add.18) on the question whether the situation prevailing in the Republic of South Africa revealed elements of the crime of genocide as defined in the 1948 Convention on that subject. In its conclusions the Working Group stated that, in the present state of South African legislation, it could not say that the South African Government intended to commit genocide, but that some witnesses had considered that certain elements of genocide existed in the practice of apartheid.

129. Having considered the report, the Commission adopted resolution 21 (XXV), in which it decided that the mandate of the Working Group should also include an investigation of grave manifestations of apartheid present in the situation prevailing in the Republic of South Africa and as brought out in the report of the Ad Hoc Working Group of Experts (E/CN.4/984/Add.18).

130. The Working Group submitted reports on the question to the Commission at its twenty-sixth session (E/CN.4/1020/Add.2, paragraphs 106-158) and also at its twenty-seventh session (E/CN.4/1050, paragraphs 184-210). At its latest hearings, the Working Group continued to consider, on the basis of testimony, whether the situation prevailing revealed elements of the crime of genocide, and it also considered other manifestations of apartheid, in particular in the fields of education, health and labour; several witnesses spoke of the gravity of these manifestations but did not describe them as genocide.

131. There is a close relationship between this chapter and other aspects of the work of the Working Group, particularly with regard to the condition of Africans in the "reserves" or "Bantustans" and in the "resettlement camps", and with regard to labour problems which are considered in greater detail in the report to the Economic and Social Council on trade union rights.

132. Mr. Ennals (RT.130, pages 63-5) said he considered that the first elements of genocide were those which relate to the absolute restriction of the human rights of a given, definable community. For this reason he believed that human rights were the fundamental issue to be considered in relation to apartheid. Use should be made not only of the genocide convention but also of other available declarations and human rights had to be considered in relation to the individual affected. In South Africa every effort was made to legalize the oppression carried out and every use was made of the instrument of the law as an instrument in the supremacy of the white minority (RT.130, page 66).

133. Several witnesses endeavoured to describe some of the origins and basic purposes of the apartheid policy. The Rev. French-Beytagh (RT.130, page 13) cited to the Group the burden of a discussion he had during one of his interrogation periods when the Immorality Act which forbids sexual intercourse between people of

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different races was cited as being inspired by the Bible. When he asked for references to texts it was apparent that these referred to man being forbidden to mix his seed with that of an animal. This, said the witness, indicated that Africans were considered to be not human beings, but animals.

134. Several witnesses, including Mr. Bidi (RT.133, pages 18-20)) said that far from being relaxed or modified, the practices and excesses of apartheid were growing worse. Apartheid in action had brought untold sufferings and miseries to millions of Africans. Its laws had no respect for African family life. Families were uprooted in their thousands to be resettled in areas which lacked the basic requirements for survival, health and the resumption of family-building.

135. The Reverend Jackson (RT.127, pages 76-80) emphasized the function of the migratory labour system as one of the grave manifestations of apartheid. It had the most adverse effects on African society, and led to a breakdown in the family and moral life of the people. Direct effects were seen also in the state of health of the people, principally extensive malnutrition. Government legislation prevented the worker from taking his family to his place of work. This policy was being intensified by the removals of populations and their "resettlement".

136. Numbers of the witnesses spoke of the degrading and dehumanizing conditions which they said prevailed in the "resettlement camps". Mr. Ennals (RT.130, page 31) said a policy of mass resettlement inflicted with coercion on the sick, the aged, on widows and women with dependent children constituted inhuman and degrading treatment and fell within the scope of article 9 of the Universal Declaration of Human Rights. Rev. Colin Jackson (RT.127, pages 76-85) cited the grave difficulties and injustices inflicted on peoples made to destroy their houses and then dumped into open fields. It was emphasized that apart from a limited number of labouring jobs, there were no employment opportunities in these areas. Minimal ration schools were provided by the Government for pensioners and persons with no family support (RT.133, page 33). Children were dying because of the lack of medical services (RT.127/Add.1 (closed)).

137. Mr. Sibeko (RT.128, pages 82-5) described the effects of influx control laws on the aged, the chronically sick and orphans and those too young or no longer able to be of service to the economy as "silent genocide". Three case histories were cited to illustrate the effects of pass and control regulations on African families and family life (RT.133, pages 22-23). These controls were said by the Government to be exercised to prevent "the indiscriminate entry of Bantu into our towns and cities in the 'white' areas of the Republic". The upheavals and uprooting had resulted in destitution, frustration and misery of unprecedented dimensions, said Mr. Bidi (RT.133, pages 24-5).

138. As has been described in the chapter on the treatment of political prisoners, a heavy proportion of the African population was imprisoned each year for minor statutory offences under the pass and other laws. The penalties were arrest and imprisonment, possibly as forced labour on farms. These measures, said Mr. Kuzwayo (RT.132, page 47) were designed to force Africans into accepting whatever

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type of work was provided. Mr. Ntloedibe (RT.133, page 33-5) said that thousands of people arrested and sent to these farms had not returned; they had not been heard of again. Man could be said to have died on the white man's farm as a result of the pass offences. This was the most important means for imprisoning Africans and using them for cheap labour.

139. As had been pointed out in the chapter on capital punishment, the persons executed were for the most part Africans. Witnesses testifying to the treatment of detainees and political prisoners at the hands of the police said that a pattern of torture had emerged in some cases (written submissions by Miss Wilcox); and that methods of torture were decidedly worse than those used in the past (Mr. Sibeko, RT.128, page 96).

140. Rev. ffrench-Beytagh (RT.130, page 6) mentioned the inferior standards of Bantu education. Referring to recent student protest demonstrations, Mr. Sibeko (RT.128, pages 87-91) said these had been sparked off by the denunciation of discrimination in education and abominable conditions in African schools, colleges and universities. The expulsion of protesting students had become a general pattern. As a result, and from time to time, a whole generation of African students was deprived of the opportunity to complete its studies and to assume leadership responsibilities so as to articulate the grievances of the African people.

Questions concerning labour

141. Several witnesses dealt, orally or in written submissions, with these questions which are taken up in greater detail in the report submitted by the Working Group to the Economic and Social Council under resolution 1599(L).

142. Mr. Valticos (RT.131) the representative of the ILO, drew attention to the seventh and eighth special reports of the Director-General on the application of the Declaration concerning the Policy of Apartheid, which analysed recent labour laws which had the effect of confirming and concentrating the powers of control of the administration. He pointed out that the Minister of Administration and Bantu Development had virtually unlimited powers to prohibit the employment of Africans or their continued employment in any given area or in any given class of employment or profession, or in the service of any given employer or class of employers (RT.131, pages 13-15).

143. Several witnesses including Mr. Valticos (RT.131, page 22), Mr. Bidi (RT.133, page 27) and Mr. Kuzwayo (RT.132, page 46) emphasized that African trade unions had no legal rights and were not represented in wage negotiation processes. Africans were also denied the right to strike. Section 18 of the Bantu Labour "Settlement of Disputes" Act of 1953 provided that no African employee should instigate or take part in a strike; to do so was a punishable offence. African workers and would-be trade unionists were prosecuted and harrassed whenever they attempted to organize or bargain on their conditions of employment. Nonetheless Africans had defied these laws and had taken strike action, for instance in Durban and Port Elizabeth in 1970 (RT.133, page 27).

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144. Attention was drawn to the policy of "job reservation", which ensured job security for white workers but none whatsoever for African workers (RT.133, page 27). The only jobs reserved for Africans were hard, unpleasant and badly paid. The labour registration procedures made Africans subject to refusal of urban entry and unemployment (RT.132, page 46) and to no choice of employment. These laws were producing slave labour and cheap labour (RT.132, page 47).

145. Witnesses drew attention to the enormous disparity in wages for white and black workers. The absence of statutory minimum wage legislation resulted in African wages being largely determined by market conditions of supply and demand, according to Mr. Valticos (RT.131, page 17). In addition Africans were placed in an unequal position because they had no collective bargaining rights under industrial legislation. The most important factor, however, was the industrial colour bar which prevented African workers from advancing to the higher-paid skills and technical occupations. An effect of the colour bar was that by creating an artificial scarcity of skilled labour it placed an excessively high premium on the skilled manpower available among the whites, which accounted to a large extent for the unusually wide differential between skilled and non-skilled wages. But even in cases where Africans and whites performed similar work, such as in the medical and teaching professions, official policy had maintained a difference between the earnings of the various racial groups. Mr. Bidi (RT.133, page 28) cited comparative wage figures in mining, building, manufacturing and the public services. He pointed out that recent wage increases in the mining industry had amounted to an extra R.7.5 million on 350,000 African employees, and R.7 million on 19,000 white miners. Thus while the African mineworker's average pay had gone up by only R.2.08 to R.13 a month, that of his white counterpart had risen by a whole R.15 (page 27). Mr. Valticos referred to tendencies in the direction of increased wages for Africans but said that so long as legislation and practice maintained discrimination against non-whites and African workers in the fields of training, education and access to specialized and skilled professions, as well as depriving Africans of trade union freedoms and bargaining rights, the position of Africans would continue to be bad.

Allegations concerning the imminence
of civil war in Southern Africa

146. Mr. Mark Shope in his written memorandum said that unless there was a rapid change towards greater political, economic, cultural and social justice, there would be a civil war which no police, army or guns could prevent. The responsibility for the violence in South Africa would rest primarily on the shoulders of the "white man" who was preventing the black man from expressing his legitimate political aspirations in the normal democratic manner.

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III. NAMIBIA

147. The illegal processes whereby South Africa has steadily extended its jurisdiction over Namibia has been described in preceding reports. 1/ An earlier report of the Group also discussed the South West Africa Affairs Act, 1969, which went even further in this illegal integration of Namibia into South Africa by greatly extending the fields in which the South West African Legislative Assembly has no jurisdiction. 2/ The transfer to South Africa of a large part of the powers and functions hitherto exercised by the Government of the territory was continued in the period 1970-72. Following on the Bantu Education Amendment Act No. 63 of 1972, 1970 which transferred African education to the direct control of the South African Government, the Coloured Persons in South West Africa Education Act No. 63 of 1972, the Bastards of Rehoboth Education Act No. 85 of 1972, and the Nama in South West Africa Education Act No. 86 of 1972, continued the process of the transfer of the control of education to South Africa, in these instances to the Department of Coloured Relations and Rehoboth Affairs, and completed the process of separating the education of non-whites from that of whites. 3/

148. The laws specifically affecting capital punishment; the treatment of political prisoners; the control of labour, especially the new Regulations for Employment Bureaux (R83, 1972); and the situation of Africans in the 'native reserves' or 'homelands' which is governed by proclamation of the State President, are mentioned in the corresponding sections of this chapter.

149. On 4 February 1972 a State of Emergency was proclaimed in Ovamboland under Proclamation RL7. 4/ All meetings, gatherings and assemblies were banned (section 3). The proclamation gave wide powers to the South African police and

1/ See especially the working paper submitted by the Secretariat
E/CN.4/22/12, paras. 1-9.

2/ E/CN.4/1020/Add.1, paras. 2 and 3.

3/ The education policies pursued by the South African Government are reviewed in some detail in the last report of the Working Group, E/CN.4/1050, paras. 283-295.

4/ Government Gazette, No. 3377.

Native Commissioners to arrest anyone without a warrant and detain anyone suspected of having taken part or of having the intention to take part in any offence under the Proclamation (section 19). Any such person could be detained until officials were satisfied he had answered fully and truthfully all questions put to him. No person arrested or detained would be allowed, without the consent of the Minister, to consult a legal adviser in connexion with any matter relating to his arrest and detention (section 20). Entry to all prohibited areas was restricted and any person not resident who entered or remained or was present in the area would be guilty of an offence (section 4). The application of these emergency powers is described in the sections of this Report dealing with political prisoners and the strike of contract labourers.

A. CAPITAL PUNISHMENT IN NAMIBIA

1. Summary of some relevant laws

150. As stated in the Working Group's preceding reports (E/CN.4/1020/Add.1 paragraph 5 and E/CN.4/1050, paragraph 215) the South African laws providing for capital punishment have been illegally made applicable to Namibia. Among these laws there is the 'Sabotage Act' (General Law Amendment Act No. 76 of 1962) and the amendments to it, and the Terrorism Act No. 83 of 1967.

2. Analysis of the evidence received by the Ad Hoc Working Group of Experts

151. Witnesses Mr. Moses Garoeb, together with Messrs. Nanyemba, Mifima and Nyamu, referred to the situation in the Caprivi Strip since 1970. Mr. Garoeb (RT. 138, page 66) said that since August 1972 the region had been virtually a closed area, which only police and military personnel authorized by the government were allowed to enter. In this period, he said, many people had been killed, while others had been forced to flee to Zambia or to take refuge in the forests.

152. On events since the strike in 1971-72 Mr. Shipanga (RT. 134, pages 4-5) presented a document which was signed but confidential and which he handed to the Chairman for verification, and which reported on police shootings in Ovamboland. According to this report army and police forces had shot into a crowd assembled at Ohangwena. One man by the name of Mr. Mandali was killed on the spot. On 28 January 1972 the police shot two men to death at Ondobe. On Sunday 30 January 1972 the police had killed four men at Epinga. On this occasion the police had fired into a crowd of people who had attended a church service. Several persons injured in this incident had subsequently died. The same week there was a meeting at Ongenga when one person was shot. Three men were killed in a police helicopter raid on Onanjena though only one body was recovered on this occasion. The document added that there was a mass grave at Onangula. The number killed was not known but some estimates put it at between 300 and 400 people buried there. The area is reported to be sealed off by a strong army contingent stationed near the spot. There had been reports of other mass graves in other parts of Ovamboland. Mass graves on the Namibian side of the border with Angola were referred to by the Memorandum of the All Africa Trade Union Federation. The Memorandum from the All Africa Trade Union Federation which was

presented by Mr. Manyandu (RT. 135, pages 2-6) also referred to the instance at Epinga when the police opened fire on a group of Anglican church members on their way from a Sunday service, bibles and hymn books in their hands. Three persons killed on the spot were Tomas Muesihange, Lukas Veike and Benjamin Helumani. Three others were injured: Seimba Muixika, Philipus Kotilipa and Kakaibe Nghidinua. A fourth injured man subsequently died in hospital.

153. Mr. Shapumba Ilonga (RT. 132, pages 28-30) said reports from Namibia were to the effect that many people had been killed during the period of the strike. A confidential letter emanating from a hospital in the northern part of the territory had reported that patients admitted had remained there without treatment and that nobody had been allowed to communicate with them; he believed that these people were now dead. From the outbreak of the strike killings had continued to take place in the northern areas. At Ondangua people from different parts of the area had been collected and chained together for three or four days (RT. 132, page 31). They had then been removed on lorries but their whereabouts were unknown; some said they had been killed or had died in camps. Others removed from their home areas and left without food and water had died trying to walk back to their home reserves.

154. Mr. Shipanga (RT. 132, pages 7-10) said it was believed some prisoners had died of torture following the strike. At Oshikata Hospital there had been corpses later removed by the police. One had been covered by a blanket. An African member of the hospital staff had asked the policemen to whom the blanket belonged. The policeman had answered 'to the prison'. The policeman thought that seven or eight persons had been buried; possibly they had been those shot by the police the previous day. Mr. Shipanga (RT. 134, page 22) said there were instances where policemen acted as judges and killed those they judged guilty on the spot.

155. According to information available to the Working Group ^{5/} about the killing of four men at Epinga on 30 January 1972, the Anglican Church in Namibia had met at Othimbingue to discuss the situation in Ovamboland and the problems of the churches involved in working there, and had on that occasion been given information about the incident. According to church informants who had been present on the occasion, a peaceful crowd of Ovambo Anglicans, many carrying prayer and hymn books were returning from Sunday church services on that date. An armed patrol met people near the church, which is a short distance from the main border road. The congregation leaving the church saw the armed patrols, took immediate fright and ran away from them in all directions into the bush. The patrol then withdrew to the border road. Certain men from the armed patrol left their vehicles and hid in the bush. The African people emerged from the bush and gathered near the church. They were discussing among themselves why the armed patrols had come when the armed men emerged from hiding and surrounded them. For the second time the people attempted to run away. Thereupon the police called on them to halt. They were then searched for incriminating documents and weapons. Eye witnesses said the police had found none. A 19 year old African youth was carrying a walking stick. A captain approached him and asked if he had a knife. The youth denied that he had any weapons. The captain said 'I know you men'

^{5/} This information is contained in a press statement issued by the Rt. Reverend Colin O'Brien Winter, Bishop of Damaraland, at a press conference held in London on 9 March 1972 at the House of Commons.

and was alleged to have jabbed towards the youth's head with a stick. The youth took fright and attempted to ward off the blow and the youth's head was splintered by the bullets. An Anglican priest, it is further alleged, has in his possession part of the youth's skull. The people then again attempted to run away and the police opened fire on the crowd and three other Africans were shot dead. Three were seriously injured and were taken to hospital in Oshakati, where one later died. The names of those killed are as given in the evidence of the All Africa Trade Union Federation, with the addition of the name of Matias Ohainengena among those killed.

156. According to the South African Security Police which offered a reward of R1,000 for the arrest of Patrick Ijambo, a guerrilla fighter in Ovamboland and southern Angola, Headman Nicodemus Hilombua of Ojavanenge was shot and wounded during a pursuit of Ijambo and he subsequently died. 6/

B. TREATMENT OF POLITICAL PRISONERS AND CAPTURED FREEDOM FIGHTERS

1. Summary of some relevant laws

157. As indicated in preceding reports of the Group the South African security laws which provide for severe penalties of imprisonment and for detention without trial on account of anti-apartheid activities have been made specifically applicable to Namibia. 7/ These include the Prisons Act No. 8 of 1959, and the General Laws Amendment Act 1969. In addition there are certain Proclamations which concern Namibia exclusively. 8/ In particular the promulgation of Proclamation R14 Ovamboland in 1972 made that area subject to emergency law. The wide powers conferred on the police and the administration by this Proclamation are summarised in preceding paragraphs of this Report. A preceding report of the Group (E/CN.4/1050, paras. 264-267) described the incorporation of the South West African Police Force into the South African Police which body is accordingly authorized to exercise the powers entrusted to the police by the laws of the mandated territory. The Commissioner of the South African Police, subject to the direction of the Minister, has the command, superintendence and control of the force in Namibia as well as in South Africa. The Republic's Police Act No. 7 of 1958 amended the definition of 'Republic' to include the Territory of South West Africa, thus applying all police powers to the territory. The South African security laws which provide severe penalties for political offences and for detention without trial which have specifically been made applicable to Namibia are thus executed by members of the South African police force stationed in or seconded to the territory.

6/ Rand Daily Mail, 10 August 1971; Star, 15 August 1971.

7/ See E/CN.4/1020/Add.1, chapter XIV, para. 9.

8/ See E/CN.4/AC.22/12 for details of the Native Urban Areas Proclamation, No. 56 of 1951, which provides inter alia that any magistrate or Native Affairs Commissioner may declare a 'native' residing in an urban area 'idle or disorderly' and order his arrest and detention prior to expulsion. See also E/CN.4/1050, paras. 261-263) for details of the Native Administration Proclamation No. 15 of 1928 and Regulations contained in Government Notice No. 6 of 1930 which delimited the functions of chiefs and headmen and made them subject to control by the Bantu Commissioners and their staffs, and to the police force.

2. Analysis of the evidence received by the
Ad Hoc Working Group of Experts

158. The evidence presented to the Working Group can be analysed under several headings: (a) information concerning recent arrests and the numbers of political prisoners; (b) allegations concerning torture and cruel, inhuman and degrading treatment of political prisoners; (c) allegations concerning violations of the right of the accused to a fair and public trial and procedures for complaints and redress.

159. The Working Group examined the evidence analysed below in the light of the international standards embodied in the following instruments: The Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Standard Minimum Rules for the Treatment of Prisoners.

(a) Information concerning recent arrests and the numbers of political prisoners

160. Mr. Garoeb (RT. 138, page 73) said he estimated that about 900 people had been arrested during and after the strike of contract workers. Those who had disappeared from their homes had still not been accounted for. He said that many of those arrested were detained not in Namibia but in South Africa though where exactly was not known. Mr. Shipanga (RT. 134, pages 5 and 6) told the Group that mass arrests had continued from the start of the strike into February 1972. His informant in Namibia had described seeing police trucks full of arrested persons heading for Ondangwa. Only those beyond any suspicion had been released. Asked for an estimate of numbers arrested and tortured, Mr. Shipanga said there were hundreds if not thousands (pages 12, 33). People had been arrested at random. The police and army had run amok in the territory, he said, especially in the northern areas but also in parts of central and southern Namibia. Where the prisons were too small to accommodate prisoners, electrified barbed wire fences had been erected and guarded by sentries (RT. 134, page 17). The Swakopmund camp in the desert was in a restricted area which no unauthorized person could enter. Those detained were essentially not even housed. Camps existed at Ondangwa, and at Oshakati, Oshikango and Runtu. There were also several in Caprivi, one at Grootfontein, another at Windhoek, at Warmbad in the south, and there were stockades at Walvis Bay and Swakopmund (RT. 134, page 16). Mr. Ilonga's evidence (RT. 132, page 31) indicated that large numbers of persons arrested during the strike had been kept chained together at Ondangwa for three or four days and had then been transported by lorries to transit camps.

161. Mr. Garoeb (RT. 138, pages 67-70) said those arrested in the Caprivi Strip had been rounded up in their villages which were burned down, and they had then been flown in military helicopters to South Africa. What happened to them there was unknown, though, he alleged, some had ended up on Robben Island as prisoners. Others were flown from the Caprivi Strip to remote areas of Namibia in the south or towards the Kalahari desert. They would there be screened and confined in camps.

162. Mr. Shipanga (RT. 134, page 32) said persons arrested for taking part in demonstrations during the visit to the territory of the United Nations Secretary-General as in Windhoek, or who had been photographed by the police in Ovamboland, for instance at Oshikati and who had later been taken from their homes in early morning police raids, had disappeared. It was not known where they were being detained. Mr. Ennals (RT. 130, pages 49-50) said 88 persons had been tried since the visit in February of the Secretary-General. The Memorandum of the All Africa Trade Union Federation (page 7) also referred to widespread arrests after this visit.

163. Mr. Shipanga (RT. 134, page 12) and Msgr. Winter (RT. 129, page 137) also testified to the many arrests of Africans for infringements of petty laws and regulations. Information available to the Working Party indicates that on 11 June 1971 armed police raided the Katatura township in Windhoek and arrested nearly 800 men alleged to be in the area illegally. All 5,200 inmates of the compound were screened and were allowed free only when the police were satisfied that they were in the area legally. Many of those arrested were expected to be repatriated to Ovamboland. 9/

164. The only official figures of the numbers of persons detained in terms of the emergency proclamation were disclosed in the House of Assembly by the Minister of Police. According to the London Times the Minister said that 213 persons had been detained for a total of more than 7,000 days, and 130 persons had been detained for periods ranging from one day to 53 days. Of those 21 had been detained for 29 days, 46 for 49 days and 25 for 53 days. In addition 83 persons were still being detained. 10/

165. On the numbers of Namibian prisoners on Robben Island, Mr. Garoeb (RT. 138, pages 74-75) said there were 34, all active SWAPO combatants, and they included Herman Ja Toivo.

(b) Allegations concerning torture and cruel, inhuman and degrading treatment of political prisoners

166. Several witnesses testified to the use of torture against political prisoners and their inhuman, cruel and degrading treatment while under detention. Mr. Shipanga (RT. 134, pages 5-10) said that his informant in Namibia had reported that when some who were clearly innocent had been released towards the end of March 1972, they had been interviewed about their experiences. The police use of torture was not a case of cruel treatment by isolated individuals but a system. Before questioning had even begun the victim was hit and kicked. An eye witness had described the kicking of a man by a team of white policemen; he was kicked in the stomach, his midriff, and sexual organs and then, when he fell down, in his face. He was then told to talk. If he had nothing to tell other methods were tried. This man was threatened with a gun; a gun was fired near his ear; dogs were set on him; he was struck by the butt of a gun; he was insulted. Arrested men taken to Oshikango were kept not in a gaol but in lorries which were packed full without place for them to stretch out to sleep. No food was provided unless Africans from the area brought it to them. In the morning they were allowed to leave the lorries to relieve themselves in the bush. During the day they had to

9/ Rand Daily Mail, Johannesburg, 12 June 1971.

10/ Times, London, 13 April 1972.

fend for themselves as well as they could. They were ill-treated and tortured. Some were questioned for days on end. The duty of the African policemen was to beat the captives. They were also forced to stand in awkward positions holding weights. If they moved they were assaulted. Some were hung on a horizontal pole by their hands or feet with head hanging down, and were beaten or kicked. The most severe treatment was the use of electric shock. The eyes were covered with a damp cloth or a blanket and the victim bound in a sitting or squatting position. The electrodes were attached to the feet and the current switched on. If the victim fainted he was revived with cold water. The victims could not see the machine since their eyes were bound, but one man managed to glance at the trade mark. It read 'Honda, Made in Japan'. At the end they were threatened not to tell anybody what they had experienced, above all about the electric shock treatment. After some days this group of prisoners was taken to Ondangua. The gaol was too small so they were kept in a corrugated iron stall where there were 10 or 11 men in a room 3.5 by 3 metres.

167. Msgr. Winter (RT. 129, pages 122-25) and Mr. Ennals (RT. 130, pages 36-37) cited the case of the Rev. Olavi Nailenge 11/ who had been tortured. He said information had repeatedly reached him in his office in Windhoek about cases of torture. He had one day shown the marks on his fingers where an Ovambo had received electric shock treatment while being held in gaol in Ovamboland. Another Ovambo had shown him the scars where part of his beard had been torn out when the police held him in solitary confinement in Pretoria for a year (RT. 129, page 126).

168. The All Africa Trade Union Federation Memorandum enumerated torture methods in use which included: gunning down on the spot; the use of electric shock treatment; dropping victims from helicopters; 'burning and roasting'; the application of paraffin; hitting and beating.

169. A written submission to the Working Group by Mr. George Mbele described conditions on Robben Island, including those of Namibian prisoners, as recorded by a prisoner recently released. For general conditions on the Island see chapter I, paragraphs 45-46. Of the Namibian prisoners it was said that they were isolated from the other prisoners and their conditions were extremely bad, even worse than in the case of the other groups of prisoners. One prisoner who had been shot in the leg at the time of his arrest had not received treatment in prison and eventually his leg had to be amputated. The Memorandum detailed three groups of Namibian prisoners confined on Robben Island. In February 1968, 30 Namibians were convicted under the Terrorism Act; 19 were sentenced to life imprisonment, a number to 20 years imprisonment, and some to periods ranging from two to five years. In August 1969 six men were sentenced under the Terrorism Act, five to life imprisonment and the sixth to 18 years' hard labour. It was one of

11/ From information available to the Working Group it appears that the Rev. Olavi Nailenge was arrested on 26 January 1972, held for the first week at Oshikanga, and then transferred to Ondangua on 2 February 1972. (Statement by the Archdeacon of Odibe released to a London press conference 9 March 1972.)

these accused Gaus Shikomba who had been shot by the police. A doctor told the Court he found a scar 9 inches by 4 caused by a bullet wound. A skin transplant had been done and the wound was very serious but Shikomba 'had the use of his legs'. Finally in a secret trial held in Pretoria in mid-1970 10 men were charged and convicted under the Terrorism act.

170. Mr. Ennals (RT. 130, pages 43-45) said the fact of these imprisonments on Robben Island, 1,000 miles from their homes, was an enormous added problem for their families who had also to go through long difficult procedures to get permission to visit their relatives in prison. In fact they were not given permission. To this should be added the cost of travel if permission were granted. He said that the imprisonment of Namibian prisoners on Robben Island was totally improper and symbolized the authority wielded over Namibia by South Africa. Mr. Ennals added that South Africa's declared support for the United Nations standard minimum rules for the treatment of prisoners included the right of prisoners, under necessary supervision, to communicate with their families and reputable friends at regular intervals both by correspondence and by receiving visits. The South African Government had declared agreement with the need to pay special attention to the maintenance and improvement of relations between a prisoner and his family as were desirable in the best interests of both. Neither of these principles was observed. Mr. Ennals said (RT. 130, page 37) it was disturbing that punishment was being extended to the relatives of Namibian political prisoners. A case in point was of Mrs. Elizabeth Toive, an aged widow, whose attempts to visit her sons serving a term of life imprisonment on Robben Island had been repeatedly thwarted. It had been pointed out to the Red Cross Committee that there were almost insurmountable obstacles to prison visits since permission had to be sought from at least four government departments before any visit was allowed.

171. Mr. Ennals also drew attention (RT. 130, page 37) to the banning in terms of the Suppression of Communism Act 1950 of Mr. Nathaniel Mahuilili, the acting president of SWAPO. Mr. Mahuilili was a former detainee, who had been charged with 36 other Namibians under the Terrorism Act of 1967. He had been found not guilty of the main charge of participating in terrorist activities but he was convicted of alternate charges under the Suppression of Communism Act. He had received a mandatory sentence of five years which was suspended for 59 months, and according to independent observers he was amongst those accused against whom the court found no evidence of participation in acts of violence. He had been under police surveillance for a long period and had led a lonely and isolated life; the new restriction imposed upon him, the banning order, would add further to his isolation. According to information received by the Group this is the first case of a Namibian being restricted under the Suppression of Communism Act, which was extended to the territory in 1966.

(c) Allegations concerning violations of the right of the accused to a fair and public trial and procedures for complaints and redress

172. The burden of the testimony about arrests and detentions in the recent period, especially since the declaration of a state of emergency in Ovamboland was that the rights of the detainee had been manifestly violated. Arrests under the powers conferred on the police and administration by proclamation, especially under the

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Proclamation R 14 which conferred emergency powers on the police, had left those detained without recourse to law, since they were specifically debarred from consulting a legal adviser. Additionally, most of the arrests had taken place in parts of the country which are remote, and inaccessible because of the emergency, and from which not even complete information about the extent of the arrests has come.

173. Mr. Shipanga (RT. 134, page 22) said despite the pretext that this was a system of law and order, the courts were 'kangaroo' courts.

174. Testimony given in private session by a witness (RT. 127/Add.1, pages 8-9) pointed out that trials following the strike had been held in remote and inaccessible parts of Namibia. This made it difficult if not impossible to get legal assistance to the accused, and difficult for the accused to summon witnesses in order to conduct their defence. This was done not for any reason of the competence of the different courts, but deliberately by the prosecution to make things as difficult and expensive for the accused.

175. Mr. Garoeb (RT. 138, pages 59-60) drew attention to the case of Mr. Brendan Simbwaye, vice-president of the South West Africa Peoples' Organization and a teacher by profession. He had taught in the Caprivi Strip until 1964 and had been arrested there for his political activities. He was taken to Pretoria and then, at the end of 1968, to Namibia, where he was detained in the southern part, near Keetmanshoop. In 1970 news had been smuggled out of prison of his impending trial, and this was exposed, but subsequently nothing further had been heard of any trial. Mr. Simbwaye was still being detained. He had not been formally charged for any act, criminal or political, in all the years he has been confined. The latest reports had been to the effect that he had been removed from the south to the northern areas, where he was still in detention, and his health was failing.

C. THE CONDITIONS OF AFRICANS IN THE 'NATIVE RESERVES'

176. This section brings up to date the previous reports of the Working Group on the conditions of Africans in the 'reserves' or 'homelands'. From evidence and information available to the Working Group, it would appear that 'transit camps' of the kind set up in South Africa have not been established in Namibia. There are instances of individuals being restricted to specific areas in reserves, but these have been individual restrictions to prescribed sites, not the removal of whole categories of persons not permitted or able to offer their labour outside the transit camps. There have of course been forced removals of African populations (see E/CN.4/1050, paras. 268-269 and 304) in the course of the Government's implementing its policy for large-scale rearrangements of the 'homelands', but these are distinct from the policy within South Africa of settling in transit camps for control purposes certain categories (described in E/CN.4/1050, para. 157), especially those considered unproductive (the aged, the sick and the widowed) and certain political prisoners when they have served their sentences. Mention during the testimony taken by the Group on 'concentration camps' (especially the evidence of Mr. Shipanga RT. 134) appears to refer not to transit or resettlement of population camps but rather to prison overflow camps or police emergency arrangements for the detention of prisoners.

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1. Background information

177. The system of native reserves devised by the German administration before the mandate period, and subsequently taken over and extended by the South African administration has been described in an earlier report of the Working Group. 12/ The implementation of the 'homelands' or 'Bantustan' policy as set out in a government commission report of 1964 has likewise been described. 13/

2. Summary of legislation enacted since 30 December 1970

178. Since the end of 1970 further steps have been taken towards the establishment of the so-called 'homelands' for ethnic groups in accordance with Self-Government of Native Nations in South West Africa Act No. 54 of 1968. 14/

179. The Namaland Consolidation and Administration Act No. 79 of 1972 15/ provided for the reservation and setting apart under the name of Namaland of a consolidated area in the territory for the sole use and occupation of the Nama people. Control previously exercised by the Minister of Bantu Administration and Development is transferred to the Minister of Coloured affairs (Section 8 (1)). The 'homeland' consists of four existing reserves: Berseba, Tses, Soromas and Gideon, together with State lands predominantly occupied by Nama in certain districts. Excluded from the homeland were three former Nama reserves: Bondels, Neuhoof and Warmbad. The Act provides inter alia that "any land in Namaland shall be deemed to be private land and the Minister to be the owner of such land.". The Minister may authorize mining of minerals and appropriate the money paid for such rights "as he may think fit for the promotion of the welfare of the inhabitants of Namaland and the general development of Namaland".

180. The Bantu Laws Amendment Act No. 23 of 1972, which was an omnibus act amending a number of laws, changed the names of Okavango to Kavango and Ovambo to Owambo, (section 8) and slightly extended the powers of legislative councils, though in matters relating only to land settlement and registration of deeds, control and regulation of road traffic, births, marriages, deaths and customary unions, the appointment of chiefs though with the prior approval of the State President; and the establishment of townships, though with the prior approval of the Minister (section 9).

181. The Development of Self-Government for Native Nations in South West Africa Act, No. 54 of 1968, empowered the State President (under sections 3, 4 and 6) to establish 'homeland' legislative assemblies by proclamation without reference to Parliament. Proclamation R 6 of February 1972 established a legislative council for Eastern Caprivi. 16/ It consists of 28 members, comprising the chief who serves

12/ See E/CN.4/1020/Add.1 of 30 January 1970, chapter XV, paras. 29-36.

13/ See A/8723/Add.2 paras. 11-40; for a summary of the recommendations of the Odendaal Commission, see Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 23 (A/8424/Rev.1), chapter VII, annex, para. 51.

14/ See E/CN.4/1020/Add.1, para. 39 for a summary of this law.

15/ Government Gazette No. 3578, 21 June 1972

16/ Government Gazette No. 3373, 2 February 1972.

ex-officio and 13 members each of the Mafwe and the Basubia Tribal Authorities. There is a four-member Executive Council. The creation of four departments of the Legislative Council was gazetted six months later. ^{17/} They are the Departments of Authority Affairs and Finance, Agriculture and Works, Education and Culture, and Justice and Community Affairs. The Council's powers were limited to the enactment of ordinances subject to approval by the State President, relating essentially to the matters covered by the above-mentioned departments. East Caprivi - which in July 1971 was brought under the area of jurisdiction of the Commissioner-General for the Native Peoples of South West Africa after having previously fallen under the direct jurisdiction of the South African Government - thus becomes the third 'homeland', after Ovamboland and Okavango and, to be designated a 'homeland' with limited self-governing powers.

182. Several enactments of the Ovamboland Legislative Council were approved by the State President and promulgated by proclamation. These included: Enactment 3 of 1972 (Owambo Trading and Licensing Enactment) ^{18/} which provided for the control of business and trading undertakings of 'members of the Owambo nation' and the issue of licences; Enactment 5 of 1972 (Owambo Nation Registration Enactment) ^{19/} which provided for the registration of members of the Owambo nation and for the issue of certificates to them; Enactment 7 of 1972 ^{20/} which changed 'Ovamboland' to 'Owambo' and the title 'Ovamboland Legislative Council' to 'Owambo Legislative Council'.

3. Analysis of evidence

(a) Political rights and police powers

183. Mr. Baroeb's evidence about the Caprivi Strip or Eastern Caprivi (RT. 138, page 66) was to the effect that since August 1972 it had been virtually a closed area, entry to which had to be formally authorized by the South African Government. Since 1971 the region had been in effect a military area, where there were daily military patrols by helicopter and military boats on the Zambesi, Chokwe and Cuando rivers. Despite the fact that the Caprivi Strip had been declared a Bantustan, it was in fact a South African military base (page 67).

184. Mr. Shipanga's evidence (see para. 166 of this report on the treatment of political prisoners) described the widespread powers of arrest and detention assumed and operated by the police.

185. Msgr. Winter (RT. 129, page 137) said that far from the Bantustans being seen by Africans as conferring political rights on their inhabitants, they regarded their placing in Bantustans as punishment for their opposition to the German administration and to successive South African Governments with which they had

^{17/} Proclamation 232 of 1972 of 15 September 1972.

^{18/} Proclamation R 1626 of 15 September 1972.

^{19/} Proclamation R 1628 of 15 September 1972.

^{20/} Proclamation R 1668 of 15 September 1972.

refused to co-operate. This was the case with the Herero people due to be settled in the Kalahari desert. The people in the various reserves had been given no choice; they had been forced into the reserves now being converted into homelands.

186. Msgr. Winter (RT. 129, pages 121-5) quoted from a document released for publication by the Damara Tribal Executive which said:

"We, the Damara people have been deprived of human dignity and freedom because we have to carry passes. We want to point out in this case that we, the natives of this land, carry passes while strangers move freely in our land. We have no freedom of speech or movement in our land. We want to keep the unity and brotherhood which exists among the people of South West Africa but we are forced to live apart like 'separate developments'. We live in our land as in a form of slavery because we are just regarded as workers. There is no free life for us... We are against the homeland policy. We are being systematically disinherited and made strangers in our own land. Damaras cannot be given a territorial authority on a little piece of ground which they regard as a chicken run." 21/

187. According to information available, the Chief Councillor of the Kovango 'homeland' has announced that his Executive has decided unanimously to ask the South African Government to grant the territory self-government. He said Kovango had progressed to the point where this step was warranted, and that the Executive Council wanted the people of Kovango to have a better role in the selection of a Legislative Council. If self-government were granted, the Council would hold an election so that the people could elect members of the Legislative body. 22/

(b) Forced removals of African populations

188. Apart from the evidence of Msgr. Winter as stated in the preceding paragraph, no new testimony was brought on forced removals of African population.

189. According to information available to the Working Group, official plans are in hand for persuading the nomadic Bushmen to move to their 'homeland' at Tsumkwe, between the Okavango and the Herero areas. The object was stated to be to cut down stock losses experienced by white farmers in the remoter parts of the southern sector. Food, tobacco and other supplies were to be made available at various points; they would have to be purchased and it was hoped that the nomads would accept employment in order to be able to pay for them. 23/ It was announced on 11 August 1970 by the Prime Minister that a Commissioner had been appointed for

21/ See also Financial Mail, Johannesburg, 4 August 1972.

22/ Summary of World Broadcasts, ME/4045/B/4, Johannesburg in English for Abroad, 1600 GMT, 17 July 1972.

23/ Star, 10 November 1969, reported in Survey of Race Relations, 1969, op. cit., page 264.

the Bushmen, and the development of Bushmanland, for their ultimate use, was being promoted under the guidance of experts in various fields. 24/

190. Of particular interest to the enquiry is a report that the Government is preparing to remove from the Kaokaoveld 'homeland' the coastal strip running the whole length of the Kaokaoveld and to substitute a 266,000 hectare slice of the Etosha Wild Game Park. Details of the proposals have been referred to the House of Assembly Select Committee on Bantu Administration. The coastal strip comprising 804,000 hectares was said by the Deputy Minister of Bantu Development to be uninhabitable, to sustain no agriculture, and to contain no mineral deposits worth exploiting. In exchange for this coastal strip the Kaokaoveld 'homeland' would be given the area which would extend its borders into the gamepark. 25/ Reports emanating from South Africa indicate that in relation to the Damara homeland, the Government is proposing to exchange certain portions of eastern white farmland for the southern and central parts of the territory. This is discussed in the section dealing with economic opportunities (para. 197).

(c) Personal freedom and freedom of expression, association and assembly

191. Testimony relating to these issues has been referred to in Section B above.

192. Additionally, Msgr. Winter (RT. 129, pages 126-130) testified to the overthrow of due processes of law which he had experienced in the case of his own deportation and in that of three colleagues who had worked in his diocese. These were Father Stephen Hayes, Mr. David de Beer and Miss Tony Halberstadt, all of whom were South Africans. Father Hayes and Mr. de Beer were currently under house arrest. Those deported had challenged the Administration to bring them to open court and place them on trial.

193. This witness also referred to the banning order served on the head of SWAPO, who was a bishop and pastor in Walvis Bay (see para. 171).

(d) Economic opportunities

194. Msgr. Winter said (RT. 129, page 137) that the reason behind the Bantustan policy was that the African people should be kept as a labour pool in semi-barren areas which could barely support the inhabitants confined there. Because there were too few resources to sustain life and permit development, the blacks became totally dependant on the white population that controlled the mineral wealth, the mines and the industrial areas. The policy of carving Namibia into six mini-estates meant the perpetuation of tribalism and made it impossible to develop the well-being of the people held in separate confines (pages 138-140).

24/ Hansard 4, 1970, col. 1450, as quoted in Survey of Race Relations, 1970.
op. cit., page 286.

25/ Star, Johannesburg, 22 April 1972.

195. Mr. Shipanga (RT. 134, page 26) said that the reserves had been created as a place where Africans could live in their old age because when they were young they were expected to go and work for the white man. That applied to the man; the women and children were condemned to live in poverty since the soil in these parts of the territory could not produce.

196. According to information available to the Working Group, 26/ the proposed Damara 'homeland' comprises 4.8 million hectares of wasteland. Only 7,736 Damaras out of 64,973 were living there according to the 1970 census. The majority exist by working on the tin mines nearby or by keeping goats and sheep. Apart from the 10 headmen paid a stipend of about £30 a month by the authorities, there is virtually nothing to keep an economically active Damara in the area. Seemingly in acknowledgement of the claim that the land proposed for the 'homeland' cannot sustain the Damaras, the Department of Bantu Administration and Development has raised the possibility of transferring a portion of the eastern white farmland in exchange for the apparently useless southern and central part of the territory. This area is a virtual wilderness except for the interest by prospectors and geologists in the possible presence of geological anomalies and the likelihood of source material for uranium. 27/ Prospecting rights to explore anomalies discovered by the Division of Geological Survey have been granted in respect of two areas of Damaraland. One is at Spitzkop where prospecting rights have been granted to the Bantu Mining Corporation, the David Graaf Investments, Di Gamma Mining (an Anglo-Vaal subsidiary) and Dr. Peter le Riche. Concessions at Trekkopje have been granted to Goldfields, O'Kiep Copper and Desert Finds (Pty). 28/ A South African financial journal commented: 'Whether these areas will yield the same promising results as Rossing, near Swakopmund where Rio Tinto Zinc holds a uranium concession, only time will tell.' But even if they do, it will make no difference to the Damaras, since discoveries of oil, precious minerals and stones and uranium in the homelands remains the sole preserve of the State in the granting of mining rights. The best the Damara can hope for under the circumstances, therefore, is the creation of a few more jobs on the mines. 29/

197. It was reported 30/ that the Department of Bantu Administration and Development would shortly allow white farmer 'agents' to move into a 300,000 hectare block of grazing land in the Kavango and Ovambo homelands. The final details of the conditions under which these 'agents' would be appointed were still being worked out but they would probably be appointed for 10 years with an option to renew their contracts for another five years. Farmers in South West Africa were already showing considerable interest in the project. It was being undertaken with the full co-operation of the Ovambo and Kavango homeland governments. The 'agents' would have to develop the land they occupied to the Department's satisfaction,

26/ X RAY, Africa Bureau, London, October 1972.

27/ Ibid.

28/ Financial Mail, 4 August 1972, page 386

29/ Ibid.

30/ Star, Johannesburg, 6 May 1972.

employ Africans from the homelands, train them in the field of animal husbandry, and undertake soil conservation works laid down by the Department. The Department spokesman was convinced that the project - and other agricultural projects being considered - would be in the best interests of the two homelands.

198. According to information available to the Working Group the budget for the Ovamboland Legislative Council for 1970-71 was as follows:

| | R |
|-------------------------------|-----------------------|
| Authority affairs and finance | 45,501 |
| Community affairs | 119,400 |
| Works | 1,887,700 |
| Education and culture | 1,043,500 |
| Economic affairs | 7,900 |
| Justice | 35,500 |
| Agriculture | 289,400 |
| | <hr/> |
| | R3,428,901 <u>31/</u> |

In addition the Department of Bantu Administration and Development and the Department of Bantu Education allocated R101,000 for the salaries of 30 seconded (white) personnel. 32/ The sources of revenue were not stated. They include the proceeds of taxation of Ovamboland citizens, and money made available by the South African Bantu Trust and the Departments of Bantu Administration and Bantu Education. Calculating on the basis of 1966 figures for the Ovamboland population (270,000) this meant a per capita expenditure of R.12.6 for the year. 33/

(e) Employment

199. This question will be discussed in detail in the Working Group's report to the Economic and Social Council under resolution 1599 (I).

(f) Health

200. Mr. Shipanga (RT. 134, page 26) told the Working Group that the death rate especially among children and the aged was extremely high.

201. Msgr. Winter (RT. 129, page 147) said that to his knowledge there were no African doctors in Ovamboland. He had spoken to white doctors who had worked in the Oshikati hospital which is a government show-piece; they had reported that certain

31/ Government Notices 793 and 796 of 29 May 1970, quoted in Survey of Race Relations 1970, page 285.

32/ R.P. 2/1970 Vote 27, ibid.

33/ Ruth First, "The Bantustans: The Implementation of the Odendaal Report", Mimeographed paper presented to the Namibia International Conference, Brussels, May 1970.

of their colleagues had gone to that hospital not to help blacks who were sick but 'to get practice with a knife.'

(g) Education

202. Msgr. Winter (RT. 129, page 147) said the Government was attempting to wrest education totally from the hands of the Church. He could count on one hand the black graduates that South Africa had produced. There were no Namibian-born doctors or engineers. Attempts in Windhoek by the Church to provide facilities to train a junior lawyer had failed because he had been boycotted by the whites for the fact that he defended pro deo blacks who were brought before the courts. The Government was obstructing those who wished to educate beyond the level of serfdom; this was done by delaying permits for teachers and frequently ordering the deportation of teachers. Estimates by church authorities were that there were 1,000 black students who for reasons of conscience and because they had refused to comply with apartheid had been thrown out of their schools (pages 122-5).

203. The Memorandum of the All Africa Trade Union Federation gave details of the closing down of the Onguediva High School and Teachers' Training complex after a protest by the students in support of the ruling of the World Court. Three students were seriously injured by police action. This had taken place on 6 August 1971. Two weeks later on 21 August 300 students were arbitrarily dismissed from the Onguediva School and half were barred from acceptance by any school in the territory. Their expulsion arose from their protest against the caning of students who had objected to indoctrination for apartheid during classes.

D. GRAVE MANIFESTATIONS OF COLONIALISM AND
RACIAL DISCRIMINATION IN NAMIBIA

204. It will be recalled that the Commission on Human Rights decided, in resolution 21 (XXV) adopted at its twenty-fifth session, that the mandate of the Ad Hoc Working Group of Experts should include an investigation of grave manifestations of colonialism and racial discrimination present in the situation prevailing in Namibia. In accordance with that resolution, the Ad Hoc Working Group submitted a preliminary report (E/CN.4/1020/Add.1, paras. 1 to 70) to the Commission at its twenty-sixth session, followed by E/CN.4/1050 submitted to the twenty-seventh session.

205. In its 1972 sessions the Working Group continued to consider, on the basis of testimony by witnesses, whether the situation revealed elements of the crime of genocide and other manifestations of the application of apartheid to Namibia.

206. There is a close relationship between this chapter and other aspects of the work of the Working Group, particularly with regard to the conditions of Africans in the 'native reserves', to labour problems (which are considered in detail in its report to the Economic and Social Council under resolution 1599 (L), and to the treatment of political prisoners.

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207. Most of the witnesses considered that the over-all practice of government, including the implementation of the Bantustan 'homeland' policy, the living conditions of contract workers and Africans in the 'reserves', the treatment inflicted on freedom-fighters, African political prisoners and those detained under emergency regulations, the policies on trade union rights, health and education, were grave manifestations of colonialism and racial discrimination and grave violations of human rights.

208. Msgr. Winter (RT. 129, page 137) said that the policy of the South African Government as far as the Herero people were concerned, was one of genocide. The allegation of genocide was also made in the written evidence of the All Africa Trade Union Federation.

209. Msgr. Winter (RT. 129, pages 138-140) said Namibians rejected Bantustans as a form of the white man's attempt to divide and conquer. There was no theological foundation for apartheid, and it was heresy and as evil as the herrenvolk legacy which Adolf Hitler had tried to perpetuate (page 151).

210. Mr. Illonga (RT. 132, page 31) said the Bantustan policy was a danger to the lives of the people of the southern part of the continent, and those further afield on the continent too. Mr. Shipanga said the Bantustans were veritable concentration camps (RT. 132, page 26) and time was working against the people of Namibia who were dying, being tortured, and being arrested daily (page 27).

211. Msgr. Winter (RT. 129, pages 121, 131) outlined the effects of official policy in contributing to the poverty of the reserves and the hopelessness of people living in them which, he said, had endured in Namibia for a 100 years and were increasing in magnitude, and would increase even further with the implementation of Bantustans. The people of the various reserves were given no choice but were forced unwillingly into the Bantustans (page 137). He quoted the instance of the Damara people (page 21) which charged that they were being systematically disinherited and made strangers in their own land. South Africa's Government, this witness said, (RT. 129, page 121) held back any real advancement of the African people by offering to them inferior, uncontrolled (*sic*) education, and by withholding the right of the African to aspire to anything beyond the most meaningful tasks. Further, the Government was prepared to use every method, including torture, deportation, house arrest and imprisonment to impose her sway on a people wishing to be rid of these tyrannies.

212. Mr. Garoeb (RT. 138, pages 68-70) drew particular attention to the declaration of a Bantustan in the Caprivi Strip. This was contrary to the resolutions of the United Nations which stipulated that Namibia should remain a territorial entity and should not be fragmented. This witness declared that the situation in Namibia had worsened since the visit of the United Nations Secretary-General, not necessarily because he had been there, but because the situation had been going from bad to worse.

213. Mr. Garoeb (RT. 138, page 67) also emphasized the use of the Caprivi Strip as a South African military base. It was from bases in the Strip and from camps

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established there that South African police, army and security forces operated not only between the Namibia-Zambia border but also between the Namibian-Angola border.

214. The policy of severe repression applied in Namibia, especially during and since the strike of 1971 and 1972, when the mass arrests of Namibians and of leaders of the protest were accelerated and cruel and inhuman treatment inflicted on political prisoners was mentioned by witnesses as being among the most grave manifestations of the policy of apartheid and of colonialism.

215. Testifying to the proclamation of emergency powers in the northern areas of Namibia, and to the treatment of captured freedom-fighters, Mr. Shipanga (RT. 134, pages 23-25) quoted from a letter read to white parliamentarians in South Africa by Senator Jack Leock in which the Senator's son, who was serving with the South African armed forces in Namibia, said he would bring the Prime Minister the scalp of a terrorist. Brutality and sadism, this witness said, had become the trademark of the illegal South African régime in Namibia.

216. Several witnesses gave evidence of police shootings and torture during the strike. Mr. Shipanga (RT. 134, pages 4-5) gave detailed evidence of incidents during January 1972 when, for instance, four men were killed at Epinga after a church service. The Memorandum of the All Africa Trade Union Federation confirmed this. Mr. Illonga (RT. 132, pages 28-30) also presented evidence of killings and maltreatment during the strike. Mr. Garoeb (RT. 138, page 73) testified to the widespread arrests that took place in this period. Mr. Shipanga (RT. 134, pages 5-6) gave evidence of arrests and detentions in camps. Several witnesses, among them Mr. Shipanga (RT. 134, pages 4-5), Msgr. Winter (RT. 129, pages 122-5) and the All Africa Trade Union Federation instanced cases of torture by the police. Other evidence pointed to the violation of the right of the accused to fair trial. (Mr. Shipanga, RT. 134, page 22; Mr. Garoeb, RT. 138, pages 59-60).

217. Mr. Ennals (RT. 130, pages 54-55) said South Africa's treatment of prisoners was in flagrant infraction of the rules which it claimed to follow. South Africa had abstained in the vote for the Universal Declaration of Human Rights in 1948, but it had adopted the United Nations standard minimum rules for the treatment of prisoners as her own South African Prison Administration Rules; however it was breaking these rules. He urged (RT. 130, page 67) the application of the conventions relating to prisoners of war to the treatment of captured freedom-fighters.

218. The bad health conditions of the African population were mentioned by Mr. Shipanga (RT. 134, page 26). Msgr. Winter (RT. 129, page 147) drew attention to the absence of African doctors and to the callous attitudes of some white medical staff working in the hospital in Ovamboland.

219. Mr. Shipanga (RT. 134, pages 23-5) said he did not accept the population statistics of the South African Government. South Africa's purpose was to hide the facts. He believed the population of Namibia was higher than the official figures, certainly over a million.

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220. On the education policy of the Government, Msgr. Winter (RT. 129, page 147) said the Government was obstructing those wishing to educate Africans above the level of serfdom. Estimates by church authorities were that there were 1,000 African students who for reasons of conscience and because they had refused to comply with apartheid had been thrown out of their schools (pages 122-5).

221. With regard to trade union rights, Mr. Kambode (RT. 132, page 16) said the Government did not allow trade unions to exist and it was illegal to strike. During the recent strike the workers were removed to Ovamboland in order that the Government might recruit scabs to replace them. Active trade unionists were arrested and killed and scabs brought in to replace them in order that work might continue. The strike of 1971-1972 had been answered by the declaration of a state of emergency.

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E. REPRESSIVE MEASURES TAKEN AFTER THE VISIT OF THE SECRETARY-GENERAL

222. On receiving evidence during its travels that the South African Government had taken repressive measures against those who had demonstrated at the time of the visit to Namibia of the Secretary-General, the Working Group felt that a letter should be addressed to the Chairman of the Commission on Human Rights drawing his attention to the fact that, according to information given to the Working Group by qualified representatives of certain liberation movements such as SWAPO and by eminent personalities such as the Bishop of Damaraland, Msgr. Colin Winter, the situation in Namibia has substantially worsened, and it has become quite clear to the Working Group after the testimony it heard that many arrests were carried out in Namibia as a result of demonstrations which marked the visit of the Secretary-General, in particular when he arrived at the airport of Windhoek (for the text of the letter, see Annex IV).

223. A cable was sent to the Secretary-General, as a matter of urgency, drawing his attention to this fact (for the text of the cable see Annex V).

224. Subsequently, on 9 November 1972, at the request of the Chairman of the Working Group, a member of the Working Group, Mr. Mani, transmitted to the Secretary-General the relevant Records of Testimony (E/CN.4/AC.22/RT.128-130, 132, 134 and 138). The receipt of these Records of Testimony was duly acknowledged, on behalf of the Secretary-General, on 22 December 1972.

225. In this connexion the Working Group wishes to thank the Chairman of the Commission on Human Rights and the Secretary-General for the consideration which they gave to the above-mentioned communications.

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IV. SOUTHERN RHODESIA

226. As regards the illegal process by which the rebel régime of Southern Rhodesia had unilaterally proclaimed the independence of that Territory, on 11 November 1965, and adopted a so-called "Constitution", reference is made to document E/CN.4/AC.22/13, paragraphs 1 to 11, and to the Group's report (E/CN.4/1020/Add.1, paragraphs 72-74).

227. A new "Constitution" adopted by the "Legislative Assembly" on 17 November 1969 came into operation on 2 March 1970. The other ancillary pieces of legislation, the "Constitutional Electoral Act" and the "Land Tenure Act", were also adopted by the "Legislative Assembly" on 17 November 1969. The relevant provisions of the "Constitution" were analysed in the Group's report (E/CN.4/1020/Add.1, paragraphs 72-74).

228. The "Land Tenure Act", certain provisions of which are treated as specifically entrenched clauses of the new "Constitution", replaces the Land Apportionment Act and abolishes the present category of "unreserved" land. It divides the land of Southern Rhodesia into three parts - African land, European land and national land.

229. The "Electoral Act", certain parts of which are treated as specially entrenched clauses of the "Constitution", determines the franchise. Among other things, it provides higher means and educational qualifications than those required at present for registered voters.

230. The "Land Tenure Act" and the "Electoral Act" were discussed in detail in the 1971 report of the Group (E/CN.4/1050, section C) and the laws relating to capital punishment and the treatment of political prisoners and detainees were dealt with in sections A and B of the same report.

231. It must be stressed that, according to the various relevant resolutions of the United Nations and also from the standpoint of the United Kingdom, Southern Rhodesia is still considered a Crown colony of the United Kingdom and accordingly all international conventions signed and ratified by the United Kingdom are also applicable to Southern Rhodesia.

232. Recent developments with relevance to Southern Rhodesian legislation included the proposals for a settlement of the British Government ^{1/} and the Bill of Rights contained in the terms for a settlement agreed in November 1971 between Sir Alec Douglas Home, the Foreign and Commonwealth Secretary in the British Government and Mr. Ian Smith, the leader of the Rhodesian régime. ^{2/} The significance of these documents for the question of capital punishment and the Law and Order (Maintenance) Act is referred to under the relevant sections, but it should be noted that the Bill of Rights retained capital punishment and also left the Law and Order

^{1/} Rhodesia: Proposals for a Settlement, HMSO, Cmd 4835.

^{2/} Rhodesia, Report of the Commission on Rhodesian Opinion under the Chairmanship of Lord Pearce, HMSO, Cmd 4964.

(Maintenance) Act untouched. The Bill of Rights would not affect the laws in force prior to the enactment of the Constitution arising out of the proposals for a settlement. The relevant clause in the Proposals for a Settlement is clause 84B to be found on page 22, which reads:

"No court shall declare any provision of an Act or statutory instrument made before the fixed date as defined in paragraph 14 of the Declaration of Rights to be ultra vires on the grounds that the provision is inconsistent with the provisions of the Declaration of Rights set out in chapter VI of the Constitution of Rhodesia 1961 or chapter VII of the Constitution of Rhodesia 1965, as the case may be."

It will be noted that the "fixed date" is defined as "the date of commencement of the Constitution Amendment Act 1972". In effect this means the date on which it was hoped the British Parliament and the Rhodesian Parliament would simultaneously amend the present (1969) illegal Constitution of Rhodesia so as to accommodate the terms agreed for the settlement. It will be recalled that the proposals for a settlement provides for the acceptance of the 1969 Constitution as the basic governing instrument of a Republic of Rhodesia. 3/

A. CAPITAL PUNISHMENT

1. Summary of some laws

233. Capital punishment is sanctioned by law in Southern Rhodesia and was so even before the unilateral declaration of independence in 1965. The relevant legislative texts are cited in detail in the 1970 report of the Working Group 4/ and in the note by the Secretariat on legal provisions of Southern Rhodesia governing political prisoners, detainees and persons in police custody. 5/ It will be recalled from that report that the Law and Order (Maintenance) Act provides for a wide range of offences which carry the death sentence. In 1968 the section of the Act which provided for mandatory death sentence under certain circumstances was repealed and thus restored to the courts the discretion to pass the death sentence according to the circumstances surrounding the given case. It should be noted however that the repeal of the "mandatory death clause" does not remove capital punishment itself from the list of penal instruments. It may be argued that the repeal of the mandatory death clause might have the effect of reducing the number of capital convictions. But the range of acts which constitute capital offences is very wide; the onus to prove innocence lies on the accused; cases which are said to impinge on state security are heard in camera so that the relief to be gained from the repeal of the mandatory death clause appears to be minimal.

3/ A/AC.109/L.760, para. 14.

4/ E/CN.4/1020/Add.1, paras. 75-77.

5/ E/CN.4/AC.22/13, annex III.

234. The Bill of Rights contained in the terms of settlement 6/ retained capital punishment. The relevant clause reads "No person shall be deprived of his life intentionally save in the execution of the sentence of the court in respect of a criminal offence of which he has been convicted." 7/

2. Analysis of the information received by
the Ad Hoc Working Group of Experts

235. The information received by the Group may be placed into two categories, namely: (a) information concerning capital punishment sanctioned through the judicial process and (b) information concerning the death of persons in suspicious circumstances while in prisons or detention camps.

(a) Information concerning capital punishment sanctioned through judicial process

236. Statistical information on prisoners who are under the death sentence is very fragmentary and as a result there is no reliable figure available to the Group on the number of prisoners who are in the condemned cells awaiting execution. According to the statement issued by the Rhodesian régime on 16 December 1968 8/ there were 92 condemned prisoners whose sentences had yet to be reviewed. On 7 March 1969, 49 had their sentences commuted to life imprisonment and on 19 August 1969 another 19 were similarly reprieved. 9/ Assuming that there were no further capital convictions over that period, there would have been only 14 persons left in the condemned cells by 19 August 1969. But on 15 September 1972, the Rhodesian régime announced that four prisoners had been executed on that day and that 55 prisoners had had their death sentences commuted to life imprisonment. 10/ On the basis of these figures, this suggests that there must have been 11 further convictions between 19 August 1969 and 19 September 1972. The Rhodesian statement does not reveal the number of prisoners who are still being held in the death cells awaiting execution or reprieve.

237. The fragmentary state of the information on the numbers of prisoners under sentence of death is revealed in the evidence of the witnesses who testified to the Working Group. Miss Judith Todd (RT.127, page 11) stated that about 200 additional people had been sentenced to death since 11 November 1965 and were waiting in the death cells in Salisbury. She emphasized however that the number "200" was approximate; it might be 188, or even 220 (RT. 127, page 42).

6/ See The Pearce Commission, p. 112, para. 420, foot-note 2/.

7/ See Rhodesia: Proposals for a Settlement, section 1 (i), p. 23, foot-note 1/, read with section 84 on p. 20.

8/ See A/7623/Add.1, para. 59.

9/ See E/CN.4/1050, para. 334.

10/ See Guardian, 16 September 1972; also Agence France Presse bulletin, 15 September 1972.

Mr. Guy Clutton-Brock (RT.128, page 27) said that he did not know the number under sentence of death. He could only speculate that it might, perhaps, be about 40 (RT.128, pages 27-30). Mr. Attwell Bokwe (RT.138) in an annexure to the statement which he read to the Working Group gave a list of persons "sentenced to death" since 1963. The list shows 67 names as follows:

- | | |
|------------------------|--------------------------|
| 1. Benoni Sibanda | 35. Isaac Mpofu |
| 2. Galist Guri | 36. Bernard Mangwarira |
| 3. James Butche | 37. Samuel Sikhosana |
| 4. Lloyd Gundu | 38. Canaan Masanuka |
| 5. Jikonayi Mabena | 39. Paul Chatiwa |
| 6. Peter Dube | 40. Paul Chinowaita |
| 7. Linos Manzonzo | 41. Stephen Bhebe |
| 8. Robert Mholwa | 42. Silambula |
| 9. Moses Makamadza | 43. Dani Makacha Ndlovu |
| 10. Jonatham Chatyiwe | 44. Herbert Chimsoro |
| 11. Fanwell Mayangata | 45. Antony Cherume |
| 12. Elijah Masibi | 46. Isaac Muyisinda |
| 13. Shoty Mkandla | 47. Dokotela Ndlovu |
| 14. Dani Mkosi Ndlovu | 48. Jacob Mtandwa |
| 15. Boniface | 49. James Chatiwa |
| 16. Raymond Chiwashire | 50. Hezekiah Moyo |
| 17. George Kawenda | 51. Rhodes Rose |
| 18. Masawi Moya | 52. Josiah |
| 19. Amen Chikwakwada | 53. Bernard Sibanda |
| 20. Simon Macebo | 54. Thomas Moyo |
| 21. Samson Mudzingwe | 55. Myandeni Ernest |
| 22. James Mpofu | 56. Samuel Kagoyo |
| 23. Herbert Sambo | 57. Isiah Mupinda |
| 24. Mathew | 58. Eliaken Gondo |
| 25. John Hlazo | 59. Stanley Rambakupotwa |
| 26. Justin | 60. Moffat Redebe |
| 27. Office | 61. Sylvester Ndliziyi |
| 28. Rabede Sibanda | 62. Amos Sagonda |
| 29. Albert Ncube | 63. Josiah Moyo |
| 30. Matswawayi Thomson | 64. Mjinisi Pula |
| 31. Alexander Chirwa | 65. Sly Masuku |
| 32. Simon Runyowa | 66. Ngcobo |
| 33. Lazarus | 67. Kopotsha |
| 34. Jankison | |

238. It would appear, according to the testimony received, that the Rhodesian régime has pursued a policy of not carrying out mass execution of prisoners under sentence of death. Apart from the five executed in 1968 ^{11/} and the four executed in September 1972, ^{12/} as Mr. Clutton-Brock has stated (RT.128, pages 27-30), the

^{11/} See A/7623/Add.1, 22 September 1969, paragraphs 4 and 6.

^{12/} Ibid., paragraph 7.

régime has pursued a policy of gradually reprieving the condemned prisoners so that they then went on to ordinary imprisonment. "They have not hanged anybody" he added. Miss Todd said she believed that "the Smith régime had been frightened to touch (execute) these people while it remained in a state of illegality... because the hangman himself might in future be sentenced for murder" (RT.127, page 42). She had little doubt that these people would be executed en masse if the Rhodesian régime was accorded legal recognition. She had expressed a feeling that her father, Mr. Garfield Todd, had been arrested and detained by the régime because he had declared publicly that the acceptance of the terms for a settlement would lead to the legalization of the régime with the result that the 200 prisoners under the death sentence would be executed (RT.127, page 11). Mr. Clutton-Brock also expressed the view that the illegal status of the régime was serving as a constraint on carrying out the death sentences. "The régime is afraid to hang people because it may come back on it at a later date" (RT.128, page 21). Mr. Mawema thought the public outcry which followed the 1968 executions had dissuaded the régime from carrying out further executions. He added that the régime was "holding very many people whom the courts have sentenced to death, particularly our freedom-fighters" (RT.129, page 21).

(b) Information concerning the death of persons in suspicious circumstances while in prison or detention camps

239. It will be recalled that at the 1970 sessions of the Ad Hoc Working Group, some witnesses referred in their statements to the mysterious death of Mr. Leopold Takawira who had been a detainee in the Salisbury prison. 13/ Apart from the case of Mr. Takawira, to whose death several witnesses again made reference, among them Miss Todd (RT.127, pages 32-6, 61) and Mr. Mawema (RT.22, page 22), Mr. Musikavanu made reference to seven other cases of persons who had died in suspicious circumstances while in prison, detention, or police custody (RT.129, pages 108-111). The names of the deceased in question are:

Mr. Chacha, died in Gwelo prison in 1970 while a detainee.

Mr. Edward Mangena, died in Gwelo prison in 1971 while a detainee.

Mrs. Miriam Mushambi, died in Whawha detention camp in 1970 while a detainee.

Mr. Jakalasi Katanda, died in Gonakudzingwa as a detainee (date not stated in evidence).

Mr. Romulus Sibiya, died in Gonakudzingwa while detained there. Witness Jacob Moyo (RT.129, page 67) stated that Romulus Sibiya died at his home a week after release from Gonakudzingwa.

Mr. Nimrod Khumalo, died in Bulawayo prison in 1971 in similar circumstances.

Mr. Mashawira, died while in police custody in Salisbury (date of death not stated).

On the death of Mr. Nimrod Khumalo, Mr. Moyo (RT.129, page 66) and Mr. Hove (RT.139, page 106) stated that he had been one of a group of 21 persons who had fled the country to escape arrest, had been refused asylum in Botswana and been deported back to Rhodesia where he had been arrested and tortured in prison until he died.

(c) Summary execution of freedom fighters

240. The detailed analysis of the statements made by witnesses on the summary execution of freedom fighters is made under the section dealing with the "treatment of freedom fighters", but since the consequence of that act entails loss of life, a brief reference is called for in this section.

241. Mr. Bokwe (RT.138, pages 7, 18-20) stated that captured freedom fighters are summarily shot. He gave as an example a case of a freedom fighter, Jonathan Ncube (pseudonym), captured by the Rhodesian security forces in the January-February battles of 1970. According to this witness he was shot at close range, and "when the enemy discovered that he was still alive, he was tied up by rope head-down on a helicopter". Mr. Musikavanu, testifying on the same question, spoke of the number of freedom fighters who had been summarily shot on being captured by the Smith forces. Although "some had inevitably died in combat", he said that "the greater number are captured and paraded summarily executed because the régime wished to avoid the adverse publicity which follows judicial executions as in the case of Dlamini and Mlambo". According to this witness, "most of the people who are said to have been shot in combat, in effect, are people who have been captured and summarily shot afterwards" (RT.129, page 107). He cited the case of a freedom fighter captured by the Rhodesian forces and killed to wreak vengeance (RT.129, pages 108-110).

B. TREATMENT OF POLITICAL PRISONERS AND
CAPTURED FREEDOM FIGHTERS

1. Historical background

242. The phenomenon of political prisoners appeared in Southern Rhodesia with the enactment of the Public Order Act of 1950. Few cases of arrests and convictions under that law are known. The known ones are those of Mr. Joshua Nkomo, who was charged and convicted in 1953 for allegedly importing prohibited literature from London, and one Mangombe, a railway worker who was imprisoned for his part in the railway strike of 1956. Earlier on, the Act had also been used against the mine workers' strike at Wankie when the entire leadership of the striking miners were arrested, charged and sent to prison for various terms of imprisonment allegedly for violating the Act. Since then several measures have come on to the statute book which have greatly increased the range of activities which now constitute political offences. The most pronounced among this large body of security laws

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is the Law and Order (Maintenance) Act of 1960 and its numerous subsequent amendments. A detailed analysis of this Act may be found in a note by the Secretariat (E/CN.4/AC.22/13, annex 11, page 1).

243. The phenomenon of political detainees and restrictees came on to the Rhodesian scene in 1959 with the declaration of the state of emergency and the subsequent enactments of the Preventive Detention (Temporary Provisions) Act 1959 and the Unlawful Organisation Act 1959. The Unlawful Organisation Act is summarized in annex II of the note by the Secretariat (E/CN.4/AC.22/13). It will be recalled that 500 men and women were incarcerated without charge or trial following the declaration of the state of emergency. Some have remained in detention to this day (Mr. Daniel Madzimbamuto). Since then Southern Rhodesia has always had a population of detainees and restrictees in her prisons and camps.

244. The activities of freedom fighters were intensified following the unilateral declaration of independence by the illegal Rhodesian régime in 1965. The principal legal instruments used by the Rhodesian régime to deal with freedom-fighters are found in the various security laws and in particular in the various amendments to the Law and Order (Maintenance) Act and the Emergency (Maintenance of Law and Order) regulations. These laws provide for operations against incursions and for the apprehension of "terrorists" by the Rhodesian security forces.

2. Summary of relevant laws

245. As indicated in the preceding paragraphs, the laws and regulations which provide for penalties of imprisonment and for the detention without trial of freedom-fighters have been analysed in detail in the 1969 and 1970 reports of the Working Group (E/CN.4/984/Add.5 and E/CN.4/1020/Add.1), as well as in the working paper prepared by the Secretariat (E/CN.4/AC.22/13).

246. It should be noted that the Public Order Act was repealed and the Preventive Detention (Temporary Provisions) Act was allowed to lapse at the end of its scheduled life. The two laws were in effect replaced by the Law and Order (Maintenance) Act. The Unlawful Organisation Act was also repealed but another Act with the same name and intention has recently been placed on the statute book (the "Unlawful Organisation Act No. 55 of 1971"). Other recent additions to the statute book are (i) the renewal of the "Minister's" powers under section 52 of the "Law and Order (Maintenance) Act 1972"; (ii) the extension of the state of emergency and all its consequential regulations (1972); and (iii) the "Departure from Rhodesia (Control) Amendment Act 1972".

/...

(a) The "Unlawful Organisation Act No. 55 of 1971"^{14/}

247. The "Act" empowers the "President of Rhodesia" to declare any organization unlawful if in his opinion it appears that (a) the activities of the organization are likely to endanger, disturb or interfere with defence, public safety or public order; (b) the organization is affiliated with a proscribed organization or promotes the objects and opinions of any organization outside Rhodesia; (c) the organization is a parent of an unlawful organization; (d) the organization is the successor of an unlawful organization and (e) the organization is composed substantially though not necessarily predominantly of, or directed or controlled, directly or indirectly by, persons who have been or are office bearers or officers of unlawful organizations (section 3 (1) and (2)). Section 6 of the Act gives the "President" power to order a person to resign from membership or office of a declared organization. The "President" is also given power to order a person not to become an office bearer or member of, or take any other part whatsoever in the activities of any organization or class of organization specified in the notice during such period, not exceeding three years. Subsection 2 of section 6 provides for penalties for offences committed under the Act. Any person who contravenes the terms of any notice given under the Act is liable to a fine not exceeding two hundred Rhodesian dollars, or five years imprisonment or to both such fine and such imprisonment.

(b) The renewal of the "Minister's" power to issue restriction orders under the "Law and Order Act"

248. The "Rhodesian House of Assembly" on 18 August 1972 approved a motion (see Rhodesia Parliamentary Debates, House of Assembly, 18 August 1972, Column 302), to extend to August 1977 the power of the Minister of Law and Order to restrict certain people without trial under sections 50 and 51 of the Law and Order (Maintenance) Act. The periodic renewal of the "Minister's" powers to issue restriction orders is necessary because section 52 of the "Act" provides that the "Minister's" power to issue restriction orders under section 50 or 51 shall not be exercised after a fixed date unless the "President", pursuant to a resolution of the "House" has extended the period during which those powers may be exercised.

(c) State of emergency

249. The Rhodesian "Parliament" extended the state of emergency and all its consequential regulations on 16 June 1972, for another 12 months.

(d) "Departure from Rhodesia (Control) Amendment Act 1972"

250. The "Act" was amended by "Parliament" in August 1972 (see Rhodesia Parliamentary Debates, 22 August 1972, Column 390). The "Act" gives the "Minister"

^{14/} Document A/AC.109/L.760 (paras. 84 and 85) drew attention to this legislation when it was still a bill before Parliament.

of Information, Immigration and Tourism power to prevent the legal departure from Rhodesia of any person if the "Government" considers that it is not in the public interest to allow such a person to leave the country.

251. The relevance of the "Departure from Rhodesia Amendment Act" becomes clear when it is read with section 23A of the "Law and Order (Maintenance) Amendment Act No 12 of 1970". That amendment provides (section 6 (1)) that "any person who is a resident of Rhodesia who attends any course of training within or outside Rhodesia for the purpose of furthering a political object shall be guilty of an offence". It should be noted that on 4 September 1972, Mr. Pieter van de Byl, the Minister of Information, Immigration and Tourism, exercising the power conferred by subsection 1 of section 3B of the "Act", cancelled the passport of Bishop Muzorewa, the leader of the African National Council. ^{15/} Other aspects of this "Act" are dealt with under the section on grave manifestations of colonialism.

252. The "Act" has extraterritorial application. It is, for instance, unlawful for a Rhodesian to attend a meeting outside Rhodesia of an organization which is declared unlawful in Rhodesia.

3. Analysis of evidence

253. Definition note. Political prisoners in Rhodesia fall into the following categories:

(a) Serving political prisoners: these are serving prison terms following convictions in courts for violating any of the numerous security laws. The Rhodesian régime does not recognize the status of "political prisoner", but maintains that they are criminals convicted by courts under the rule of law. In this category of prisoners are to be found personalities as Reverend Ndabaningi Sithole, the leader of the Zimbabwe African National Union (ZANU), who was sentenced to six years' imprisonment by the Rhodesian High Court on 12 February 1969. ^{16/}

(b) Detainees: these are held without trial in prison or camps on "Ministerial" orders under the "Law and Order Act" and/or under the "Emergency Powers (Maintenance of Law and Order) Regulations".

(c) Suspects: these are in police custody held under the 30-day clause of the "Emergency Regulations". ^{17/}

^{15/} The order cancelling Bishop Muzorewa's passport is reproduced in Moto of 16 September 1972. The paradox of the case is that the order contains information which is not consistent with that on the passport to which it purports to refer. The order shows Muzorewa's passport number as 88475 issued on 10 June 1969. According to the editor of Moto, the number of Muzorewa's passport is 88318 and was issued on 12 June 1969.

^{16/} See A/7623/Add.1, para. 60.

^{17/} See "Emergency Powers (Maintenance of Law and Order) Regulations 1970", section 45 (1).

(d) Freedom-fighters: these may be in any of the three classes above depending on their circumstances and the stage at which their case might be at a given moment. The "Secretary for Law and Order" reported in 1970, with respect to freedom-fighters that all those arrested had already been convicted in the courts. ^{18/} He further reported that among the 137 detainees being held at the time were "captured terrorists and saboteurs". ^{19/}

254. Mr. Ennals drew attention to the growing frequency of the detention of convicted political prisoners after their sentences had expired (RT. 130, page 38). His statement is corroborated by a report in Moto, a Rhodesian weekly paper, that some prisoners have been moved to Gonakudzingwa detention camp at the end of their terms of imprisonment in Salisbury prison. ^{20/}

255. The evidence heard by the Group may be analysed under the following headings:

(a) allegations concerning the number of prisoners and the organization of prison services;

(b) allegations concerning cruel, inhuman or degrading treatment of political prisoners and freedom-fighters;

(c) allegations concerning the ill-treatment of political prisoners and captured freedom-fighters in the matter of (i) accommodation (ii) food (iii) clothing (iv) medical care and (v) other amenities; and

(d) allegations concerning violations of the right of accused persons to a fair and public trial and also concerning procedures for submitting complaints and claiming redress.

256. The Working Group examined the evidence, as in the past, in the light of the international standards contained in the Universal Declaration of Human Rights and other relevant instruments. ^{21/}

(a) Allegations concerning the number of prisoners and the organization of prison services

257. No evidence was tendered on the number of serving political prisoners in Rhodesia. Miss Todd (RT. 127, page 42) spoke of the 200 under the sentence of

^{18/} Report of the "Secretary for Law and Order" for the year ended 31 December 1970.

^{19/} Ibid.

^{20/} Moto, 7 October 1972.

^{21/} See E/CN.4/1050, para. 338 and 339.

death and referred (pages 21-25) to over a thousand arrests in the period the Pearce Commission was in Rhodesia. The Pearce Commission subsequently reported that the Rhodesian Government supplied the following cumulative figures of the numbers of persons arrested and detained during the whole period the Commission was in Rhodesia: 22/

| | as at: 27 January 1972 | 28 February 1972 | 11 March 1972 |
|-----------------------|---------------------------|---------------------|------------------|
| Number of arrests | 1,119 | 1,607 | 1,736 |
| Number of convictions | 176 | 647 | 689 |

The rest of the cases were either pending trial or have been acquitted or released without trial.

258. The evidence given by the witnesses does not give the numbers of detainees held in Rhodesia. Miss Todd, for instance, said (RT. 127, pages 32-35) she was not sure how many detainees there are altogether, but many of them had been held for eight or nine years. Mr. Ennals (RT. 130, page 38) gave the figures only for those prisoners who became detainees after completing their jail sentences as serving prisoners. There were 33 of these. He named (RT. 130, page 39) in particular Mr. Welshman Mabhena, who completed a sentence for political offences in June 1966 but is now still being held in Gonakudzingwa. A letter written by the detainees who are held in the Remand Prison in Salisbury to Mr. Lardner-Burke, "Minister of Justice and Law and Order", shows that there are 34 detainees held in Salisbury alone. 23/ The numbers held in other prisons are not known. According to the illegal régime, there were, in November 1971, 93 African detainees, of whom 31 were to be released as soon as the necessary arrangements could be made. 24/ This does not include Mr. and Mrs. Chinamano and Mr. Garfield Todd or persons who were arrested and detained during the Pearce Commission's visit to Rhodesia.

259. As far as the number of freedom-fighters is concerned, this is shrouded in closely guarded secrecy for fear by the régime that the disclosure of their numbers might cause public alarm.

260. The organization and the location of prisons and other places of detention were dealt with in the Working Group's report for 1970 (E/CN.4/1050, para. 340) and in the report of the Special Rapporteur (E/CN.4/949/Add.2).

22/ Report of the Commission on Rhodesian Opinion under the Chairmanship of Lord Pearce, op. cit., para. 350.

23/ An edited text of the letter was reported in Observer, London, on 29 October 1972, under the title "Inhuman suffering of Smith's prisoners".

24/ See A/AC.109/L.760; also Rhodesia: Proposals for a Settlement, Cmdd 4835, p. 15, para. IV.

(b) Allegations concerning cruel, inhuman or degrading treatment of political prisoners and freedom-fighters

261. There are some variations in the form of ill-treatment suffered by serving political prisoners and detainees on the one hand and the freedom-fighters and those in police custody on the other.

262. Miss Todd (RT. 127, page 26) stated that she and her father were each kept in solitary confinement in prison for five weeks. Although she supposed that her prison cell in Chikurubi Prison "was not bad" because she had a bed, a table and a cold-water shower, she thought the most difficult thing for her was solitary confinement (RT. 127, pages 27-30).

263. Miss Todd described the ordeal of forced feeding to which she was subjected (RT. 127, pages 37-40). She had embarked on a hunger strike as a protest against the broken promise that normal political activity would be permitted in Rhodesia during the visit of the Pearce mission, and she regarded the decision to force-feed her as a political decision taken to coincide with a press conference at which Mr. Smith denied that she was on a hunger strike. The attempt to force-feed her had to be tried 12 or 13 times on that occasion, and she had afterwards collapsed on the floor of her cell. The second attempt at force-feeding on the following day had been successful.

264. Mr. Mawema (RT. 129, page 11) described how prisoners were asked to strip naked any time a police officer came round, under the threat of a police dog. Another case of "stripping naked" is described by Mr. Musikavanu (RT. 129, page 98) in the following terms: "I was ordered to strip completely naked and, without respect for my person or dignity, every private part of mine was closely examined and I was asked to do a very humiliating dance indeed, ending up in my bending and my anus being examined for any prison contraband or information that I might have brought from outside to inmates."

265. Mr. Moyo (RT. 129, page 87) drew attention to beatings up by the police and the setting of police dogs on detainees. "Every morning the police came to make us wake up... so that we could answer the roll-call and if a detainee delayed in getting up, he would be kicked." Mr. Moyo recalled a policeman jumped on Kumira's chest one day while he was still asleep, because he was late in getting up. Mr. Moyo (RT. 127, page 87) further recalled the case of Nzaca Nkomo who "had all his trousers 'gone' because they had been eaten by a police dog, and one of his eyes injured".

266. With respect to freedom-fighters and to suspects in police custody, cruelty and inhuman treatment were said to take the form of beatings and electric shock treatment, locking up in "frozen chambers" and "summary shooting".

267. Miss Todd (RT. 127, pages 12-15, 53-55) testified to the case of an African student of about 21 years of age named Kwirirai Shoko who had been arrested at a meeting in the Belingwe area. She had information that Mr. Shoko was severely beaten by the African C.I.D. during interrogation in the bush out of earshot of

the other prisoners, to try to get him to give them information about who was organizing the "No Campaign". Mr. Guy Clutton-Brock (RT. 128, page 11), thought that the European policemen "were a bit afraid to beat prisoners up in the cells", but the African plain-clothes C.I.D. members beat them up and "for that work the régime chose a very rough type, an unmoral type of person indeed".

268. Mr. Mawema (RT. 129, page 11), a former detainee, said that persons were tied up by their legs and hung from poles with their heads down. They were hit around the body and kicked in the chest. Mr. Mawema added that they were refused sleep during 24-hour interrogation sessions in order to "break them". Mr. Mawema also described how corporal punishment was applied. A man was stripped naked, tied to a pole with belts around his neck, back and knees and then caned. His mouth was closed so that he would not be heard if he screamed (RT. 129, page 21). Mr. Moyo (RT. 129, page 86) referring to his own personal experiences in Gwelo prison said that he had been struck with a baton and as a result had lost his teeth; the stumps were removed at the Whawha hospital. Mr. Mawema (RT. 129, page 11) also stated that freedom-fighters in custody were subjected to electric shocks and severe beatings. It will be recalled from the evidence of one witness at the 1970 hearing (see E/CN.4/1050, paragraph 139) that Mr. Bhebe, the former driver of Joshua Nkomo was now deaf and crippled as a result of that kind of treatment.

269. The use of a "frozen chamber" as a form of torturing suspects was raised in Mr. Moyo's testimony (RT. 129, page 66) on the death in prison of Mr. Nimrod Khumalo. On his return to Rhodesia from Botswana where he had been refused asylum, Mr. Khumalo was arrested and subjected to intensive interrogation. At intervals he would be placed in an ice-frozen room. When the police were satisfied that he was sufficiently frozen, they would take him out into an office where he was questioned. A pair of pliers was used to pinch him from time to time. Owing to this constant torture, Mr. Khumalo subsequently died in prison. It will be recalled that in the Bhebe case referred to above (see E/CN.4/1050, paragraph 349) the police had also removed his finger nails through the use of a pair of pliers.

270. Mr. Musikavanu (RT. 129, pages 111-112) said the Guromonzi detention prison was used as a torture centre. It had single cells into which iced water was piped. Prisoners were detained indefinitely. He cited the case of Mr. Nevison Mukanganga who had been detained in this prison under suspicion of possession of arms. He had come out of this prison a mental wreck. He had also contracted asthma and rheumatism.

271. Mr. Musikavanu (RT. 129, page 11) also alleged that suspects injured in the course of beatings were not released lest their injuries would provide proof of the assaults against them, but were removed indefinitely to detention. He said this had happened to Mr. Mukanganga after his torture in Guromonzi prison.

272. Mr. Clutton-Brock (RT. 128, page 21) and Mr. Ennals (RT. 130, page 67) drew attention to the treatment of captured freedom-fighters not as prisoners of war but as criminals. Mr. Clutton-Brock believed that they were closely imprisoned and

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lived an arduous prison life. Mr. Ennals said that there was much to be said for asking that conventions relating to prisoners of war should be applied to the treatment of freedom-fighters. He suggested a United Nations Mission to Rhodesia where an illicit government was imprisoning people, maltreating them and keeping them in restriction.

273. Mr. Bokwe (RT. 138, page 21) drew special attention to the type of ill-treatment meted out to those detained for specifically opposing the settlement proposals and held under the 30-day clause. It had not been possible to discover much of the conditions under which they had been held for they had been whisked away and then not detained in one place. They had, he said, been left without food for days, and their ill-treatment was still continuing. They had been left without shoes in thorny places as a form of punishment.

(c) Allegations concerning the ill-treatment of political prisoners and freedom-fighters in the matter of accommodation, food, clothing, medical care and other amenities

(i) Accommodation

274. Several witnesses testified on the question of accommodation in prisons. Mr. Musikavanu (RT. 129, page 98) found the area of confinement very small. Six prisoners were crammed in an ill-ventilated cell of about eight feet by six feet. During the day 90 prisoners were kept in a courtyard measuring about 40 yards by 25 yards (RT. 129, pages 99-100). He also stated that the cell was infested with fleas and lice (RT. 129, page 98). Mr. Mawema (RT. 129, page 11) said that prisoners slept on bare, cold cement and as a result he was attacked by rheumatism which has since become a permanent ailment. Miss Todd, from what she could see from her own prison cell, thought that each prison dormitory in the African section accommodated 20 inmates with no internal facilities for sanitation.

275. Mr. Bokwe (RT. 138, page 7) said that in Gonakudzingwa Restriction Camp the detainees live in galvanized-iron barrack huts which are ovens in the hot weather and refrigerators in the cold. Gonakudzingwa was also situated in a swampy malarial area near the Mozambique border and many detainees suffered a variety of illnesses.

(ii) Food

276. According to Mr. Musikavanu (RT. 129, pages 99-100), food lacked vitamins and variety. Prisoners were fed on a diet which comprised 98 per cent carbohydrates and the food consisted mainly of mealie-meal every day. As a result of bad food (RT. 129, page 101), prisoners developed malnutrition diseases and he himself lost four teeth.

277. A similar allegation is made by the detainees held in the Remand Prison in Salisbury in a letter to the "Minister of Justice and Law and Order" on

1 August 1972.^{25/} The letter complains: "Scale III food is exceedingly poor, always deliberately badly cooked and unfit for human consumption". The letter goes on to say: "Your prisons have become institutions where men contract T.B. and other diseases.... A colleague amongst us is suffering from T.B. having contracted it in Khami Prison".

(iii) Clothing

278. No witness testified on this item. Attention is drawn, however, to the fourth schedule (clothing), scale 3 (male), of the Prison Regulations (Federal Govt. Notice No. 42 of 1956 - see E/CN.4/949/Add.2, page 353). The scale provides for two shirts and two pairs of shorts only. The Salisbury detainees' letter referred to in paragraph 277 above, states that detainees are in dire need of "such necessities as shirts, trousers, shoes, pillows, towels, toothbrushes, toothpaste, spoons, etc."

(iv) Medical care

279. Mr. Musikavanu (RT. 129, page 101) said one effect of detention had been the loss of eyesight in certain prisoners. Mr. Amos Mkwanzizi, for instance, had become completely blind, and three others had only partial sight. The régime had refused to supply spectacles to those who normally wore them. Appeals had been made to international organizations for help with these facilities but the detainees still had to provide half the cost in view of the great number of people involved. He said prisoners also suffered from ulcers and hypertension caused by the break-up of families with the detention of the breadwinner.

280. Mr. Moyo (RT. 129, page 67) testified to the shortage of doctors in detention camps. It was because of this that Mr. Romulus Sibiya had had to leave the camp to go to a shop outside to buy some tablets; as a result he had been beaten up and had, on his release, subsequently died. Miss Todd (RT. 127, page 61), said the death of Mr. Takawira had been a result of gross negligence by the medical authority in the prison in which he had been confined. Mr. Mawema (RT. 129, page 12) said that Mr. Takawira had been refused hospitalization for the last six years that he was in detention.

(v) Other amenities

281. Witnesses said that prison life deprived the inmates of all amenities external to the prison including communication with their families. According to Mr. Musikavanu (RT. 129, pages 108-110) access to their families was denied and when they tried to get education, this was also denied. He added that prisoners could see their families only once a week through a very thick glass. There was no physical contact during the visit. Communication was effected by means of telephone apparatus.

^{25/} See foot-note 23 above.

(d) Allegations concerning violations of the right of the accused persons to a fair trial

282. Miss Todd's evidence (RT. 127, pages 12-15, 31, 32-35) referred to cases of detention under ministerial orders and arrests under the 30-day clause of the Emergency Powers Act, in both of which cases there is no recourse to courts for redress. She cited the case of Mr. Shoko to demonstrate how helpless a lawyer was under the security laws. Following Mr. Shoko's arrest, Miss Todd instructed a lawyer to handle Mr. Shoko's case. When the lawyer contacted the police, he was told that Mr. Shoko was detained under the "Emergency Powers Regulations" under which a lawyer could not do anything for his client. In reply to a question on whether a detainee could have access to a lawyer (RT. 127, pages 32-35) she pointed out that there was no point in having a lawyer because you could not bring your case before court. She instanced the cases of Mr. Joshua Nkomo, who had been held in detention since April 1964 without charge or trial, and that of Mr. Daniel Madzimbamuto who had been likewise detained for over 13 years.

283. Miss Todd said (RT. 127, page 26) her own case and that of her father had come before the Review Tribunal but they had refused to attend. This was because the tribunal was to judge whether it was expedient for the person to remain in detention, not whether or not the detainee was guilty of a specific charge. The tribunal was composed of three judges but also the Special Branch police, who were the accusers. The detainee was not allowed to see any of the witnesses and was given only a heavily censored copy of the document concerning himself (RT. 127, page 26). The detainee was not told the evidence against him or the reasons why the judges decided he should remain in detention. She regarded the proceedings as a "joke", which was why she had not appeared before it.

284. It will be recalled that since the enactment of the "Law and Order (Maintenance) Act", the accused person in political cases is no longer protected by the old legal tradition of "presumption of innocence" until proved to the contrary. 26/

C. CONDITIONS OF AFRICANS IN "NATIVE RESERVES"
AND "TRANSIT CAMPS"

1. Historical background

285. The term "Native Reserves" is no longer in use in Southern Rhodesia. It was abolished in 1962 under the provisions of the 1961 constitution when the

26/ See E/CN.4/949/Add.2, para. 1112.

Reserves and the Special Native Areas were combined to form Tribal Trust Land, which was vested in a Board of Trustees for the exclusive use of tribesmen. This was a change in name only since all the laws and conditions which applied to the Reserves before the change, do in all important respects still apply to the present Tribal Trust Land. The detailed account of the historical background of Native Reserves in Southern Rhodesia and the summary of the relevant laws relating to them may be found in the Group's 1970 report (E/CN.4/1020/Add.1).

286. The phenomenon of "Transit Camps" has two dimensions in Southern Rhodesia depending on the sense in which it is used. In the first instance the South African transit camps designed by the South African Government to be the dumping ground of landless Africans who are being cleared from the "so-called" white areas 27/ seem to be synonymous with Rhodesia's "resettlement villages".

287. This removal process has existed in Rhodesia for decades. In 1950 for instance, the Government decided to remove so-called "unauthorized" Africans from the European area irrespective of whether or not the land from which they were removed was required for immediate European occupation. 28/ The Africans affected by the removal were lodged in resettlement "pockets" in what have since become the Tribal Trust Land. The recent manifestations of this practice are seen in the cases of Chief Tangwena and his people, the Nyamukwarara Valley people of Stapleford and many others. 29/ A full account of these cases is given in the analysis of evidence under the section on "mass resettlement".

288. The second form of transit camps is that described by Mr. Bokwe (RT. 138) and Mr. Malianga (RT. 139) in their evidence to the Working Group. Mr. Bokwe (RT. 138, page 7) characterized these camps as labour camps where the workless especially school-leavers are kept and forced to do work and/or are sent to "Boer farms" where they work for very little money (page 13). Mr. Malianga (RT. 139, page 116) described them as labour exchanges where the workless are held for about a month and are then distributed to centres where there might be work for them. Mr. Bokwe said the camps were in several centres and that people were placed in those located in the regions which seemed to be nearest their place of origin according to their identification system called immigration certificates or "stupas". (RT. 138, page 13).

2. Summary of legislation in force

289. A comprehensive survey of the laws which affect Africans in Tribal Trust Land may be found in the reports of the Working Group for the years 1970 and 1971 (E/CN.4/1020/Add.1 and E/CN.4/1050) respectively. There have been no major legislative developments over the period under review.

27/ See E/CN.4/1050, paras. 156 and 157.

28/ H. Dunlop, "Land and Economic Opportunity in Rhodesia", Rhodesian Journal of Economics, vol. 6, No. 1, 1972.

29/ Report of the Secretary for Internal Affairs for Year ending 31 December 1970.

3. Analysis of evidence

(a) Mass removals

290. The evidence of the witnesses and the information available to the Group show that the policy of mass removals is being pursued by the Rhodesian authorities. Miss Todd (RT. 127); Mr. Clutton-Brock (RT. 128) and Mr. Bokwe (RT. 138) all drew attention to the evictions of Africans from their fertile traditional land to infertile, arid areas. They all referred to the case of the Tangwena Tribe on which the Group of Experts has reported in their previous reports. ^{30/} The new feature in this case, brought up by Miss Todd (RT. 127, pages 67-70), and by Mr. Bokwe (RT. 138, page 6), is the burning of the Tangwena huts in July 1972 and the taking of their children as ransom. According to certain evidence, these children were placed in a camp located in the Salisbury area. Mr. Clutton-Brock (RT. 128, pages 31-35) cited further cases of the uprooting of the population in Wheya reserve, where the people had their crops destroyed and their fences torn up, as a result of which over 100 persons in two groups went to prison, and in the lowland areas of Chiefs Mtema and Mtambara, where the people were turned off their land. He said such cases were occurring continuously on Mission land and in "white" areas.

291. The statements of the witnesses are supported by information in "Government" official publications. The annual report of the "Secretary for Internal Affairs" for the year ending December 1970 ^{31/} states that there were 5,000 people in the Nyamukwarara Valley at Stapleford near Umtali to be resettled in the Tribal Trust Land. A start had already been made in 1970. In Matabeleland, the report says that the Tribal Trust Land of Bubi, Lupane, and Nkai received in that year families who had been living in adjoining forest areas. The report further states that between May and September 11,000 squatters were moved from Chilimanzi and resettled in Queque district. The latter exercise involved 92 villages.

292. Working paper A/AC.109/L.760 dated 8 February 1972 draws attention to the régime's intention to evict 3,500 Africans from Epworth Mission, 1,000 from the Catholic Mission at Chishawasha and 5,000 from land belonging to the Forestry Commission at Stapleford.

(b) Political rights

293. The absence of political rights in Tribal Trust Lands and among the African population as a whole, was emphasized by Mr. Clutton-Brock (RT. 128, page 46). In his view, the "Ministry of Internal Affairs" was deeply inspired with the spirit of nazism, and had tried to take over total control of African life. According to Mr. Bokwe (RT. 138, page 6) the Rhodesian régime was introducing the South

^{30/} See Rhodesia: The Ousting of the Tangwena, Christian Action Publications Ltd., London, January 1972.

^{31/} Report of the Secretary for Internal Affairs for Year Ending 31 December 1970.

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African system of Bantustans under the guise of "provincialization". It was intended to give token political rights to Africans in the so-called provincial assemblies. Mr. Christopher Munnion ^{32/} described provincialization as a Bantustan type of regionalization which would involve the creation of two regional African assemblies in Matabeleland and in Mashonaland. The chief would have the dominant influence in the assemblies.

(c) Personal freedom; freedom of expression, of peaceful assembly and of association

294. It will be recalled that at the national level, the "Departure from Rhodesia (Control) Act" restricts the freedom of Africans to leave the country. Internally, freedom of movement is severely restricted by the statutory requirement that no person shall leave his residential district without the permission of the chief or the district commissioner. According to Mr. Moyo (RT. 129, pages 68-70) any person who goes to the area of another chief without permission is prosecuted in the chief's court or in the district commissioner's court.

295. Evidence of violations of the freedom of assembly and association is seen in the action of the police at Humbani where, according to Miss Todd (RT. 127, page 16) the police interfered with a meeting which had been called to discuss the White Paper on the terms for a constitutional settlement. Before the meeting started, the police arrested a number of people who had been concerned with organizing meetings to discuss the White Paper. As a result of police action, violence erupted. On 29 June 1972 the "Government" imposed further restrictions on the organization of political meetings in African areas. The new order restricts the holding of meetings in the African Purchase Areas without the authorization of the District Commissioner. The order also forbids the holding of open air meetings in African areas.

(d) Economic opportunities

296. Economic opportunities in Tribal Trust Land are for the most part dependent on land distribution and the quality of the land. The evidence of the witnesses who testified on this item all points to this fact. They all stress the inequitable distribution of land between the Europeans and the Africans. Mr. Moyo (RT. 129, page 71) said that African land lay in the low veld while European land was located in the high veld. According to Miss Todd (RT. 127, pages 67-70), some hundreds of thousands of persons were being shifted from good areas into poor areas.

297. It will be recalled from the evidence of one witness at the 1970 hearing (Mr. Blackney E/CN.4/1050, paragraph 385) that the official geological map published by the "Government" shows that of the land which the "Government" survey

^{32/} Daily Telegraph, 14 July 1972.

agency describes as suitable for afforestation, fruit growing and intensive beef production, only 2 per cent lies in African areas and 98 per cent in European areas; of land suitable for intensive farming, only 18 per cent lies in African areas, while 82 per cent is owned by Europeans; but if the land is unsuitable for any agricultural purposes, 100 per cent of it lies in African areas and none in European areas. This disparity in quality between African and European land limits to a great extent the economic opportunities for Africans in Tribal Trust Lands.

(e) Education

298. Expenditure on education continues to favour the white child. The amount spent on African education in 1970 was Rhodesian \$17,104,380 while that spent on white education was Rhodesian \$16,329,652. Given the number of pupils in each group, the amount spent on each African child is about one tenth that spent on a white child. 33/ Whereas in 1970 there were 637,000 African children and 33,046 white children in primary schools, at secondary school level there were 23,365 white children and, only 26,183 African. 34/

299. On 25 August 1971 the Smith régime withdrew study grants from 24 African students at the University of Salisbury because the students had taken part in a protest demonstration. 35/ The régime has continued to intensify its apartheid policy in education. On 3 February 1971 the "Minister of Education" wrote to the Roman Catholic Bishops informing them of the racial quotas which must be observed in multiracial schools. In schools which are predominantly white, the African enrolment should not normally exceed 6 per cent of the total intake of all the children. In schools which are predominantly Asian and Coloured, the African percentage should not exceed 15 per cent. 36/

D. GRAVE MANIFESTATIONS OF COLONIALISM AND RACIAL DISCRIMINATION
IN SOUTHERN RHODESIA

300. The Commission on Human Rights, in its resolution 21 (XXV) decided that the mandate of the Ad Hoc Working Group of Experts should include an investigation of grave manifestations of colonialism and racial discrimination in Southern Rhodesia. Pursuant to that resolution, the Ad Hoc Working Group of Experts

33/ The African Predicament in Rhodesia, Minority Rights Group, London, Report No. 8, January 1972. p. 9.

34/ Ibid.

35/ See A/AC.109/L.760, para. 76.

36/ Guardian, London, 18 February 1971.

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submitted a preliminary report to the twenty-sixth session of the Commission (E/CN.4/1020/Add.1, paragraphs 71-111) and included relevant information on the subject in its reports to the twenty-seventh session (E/CN.4/1050, paragraphs 393-419) and to the twenty-eighth session (E/CN.4/1076, paragraphs 79-85) of the Commission. At its hearings during 1972 the Ad Hoc Working Group of Experts continued to take evidence on grave manifestations of colonialism and racial discrimination, in particular the repressive measures against the African population, Southern Rhodesia's military alliance with South Africa, the measures adopted in regard to land distribution and forced removals; the treatment of political prisoners and the violation of trade union rights, and employment opportunities.

(a) Repressive measures against the African population

301. Of particular relevance to the Group's inquiry on the manifestations of colonialism and the use of repressive measures against the African population is the conduct of the régime and its police force during the mission of the Pearce Commission to Rhodesia to decide the acceptability of the terms agreed between the British Government and the Rhodesian illegal régime. (The full text of the settlement terms appears in the Security Council document S/10405 of 1 December 1971.) At the end of the inquiry the Commission reported that "the people of Rhodesia as a whole do not regard these proposals as acceptable as a basis for independence".

302. Mr. Mawema (RT. 128, pages 127-130) stressed that though the government had said 14 persons were shot during the demonstrations during the Pearce mission, the number was in fact 31.

303. Miss Todd (RT. 127, pages 8-10) stressed that despite the express requirement in the White Paper that normal political activities would be permitted in the period before and during the test of acceptability, the régime did not honour its part of the agreement. She considered (RT. 127, pages 12-15) that one of the reasons for her own detention under the emergency regulations was that in December 1971 and early January 1972 she had been able to supply the press and the Pearce Commission with news of police repression on Tribal Trust Land. This information was from one of the first areas in the country where the people were beginning to respond "No" to the settlement terms. The authorities grew very active through their administrators, the "Ministry of Internal Affairs" and the police, and towards the end of December the first large-scale arrests started. Her father, Mr. Garfield Todd, and Mr. and Mrs. Josiah Chinamano (known together with her as the "Pearce detainees" because they were opposed to the settlement terms) remained in detention (RT. 127, pages 7, 8-10). Miss Todd said she could give no accurate estimation of the numbers arrested during that period, since she had been under detention, but according to reports from the Belingwe area, which surrounded her home, so many arrests were made after the Pearce Commission left the country that the police were hiring private buses to carry prisoners to gaol (RT. 127, pages 62-65). The repressive action was calculated to ensure that there would be a "Yes" vote while the Pearce Commission was in the country and in the post-Pearce visit period was then to try to reverse the eventual "No" decision. This was still happening and the army and the police

were "on the move". At the beginning of January a group of paramilitary police known as the Police Support Unit was called out in the area known as Humbani to sweep the area, arresting hundreds of men, and even beating children to find out where their fathers were (RT. 127, page 16).

304. Miss Todd said (RT. 127, page 12) that the Smith régime was so determined to reach a settlement with the British Government that a further blanket of repression was being laid down across the African areas in Rhodesia, particularly the Tribal Trust Lands. The "Minister of Internal Affairs" had warned of removing those chiefs who were weak and had "failed to govern properly" while the Pearce Commission was in the country. She assumed the warning was directed against those chiefs who had been brave enough to say "No". Miss Todd suggested (RT. 127, pages 17-20) that the chiefs would be invited to use more widely the powers they had to impose public floggings through the Chiefs' courts. It would bring the possibility of violence nearer, she said, since there was bound to be a reaction to the use of these powers. Mr. Mawema (RT. 128, page 118) said that after the Pearce Commission finding the "Government" had started a witch-hunt among chiefs and headmen who had not accepted the proposals. Chiefs and headmen were being summoned to the indoctrination centre at Domboshawa close to Salisbury, where they were required to state their position in respect of government policy. Since chiefs were government servants it was logical that their chieftainships were at stake if they disagreed with the government policy. This activity by the "Government" was part of an attempt to muster a delegation of Africans who would be expected to present a petition to London for the reversal of the "No" finding.

305. Mr. Clutton-Brock (RT. 128, page 46) characterized the Rhodesian régime as Nazi, and said the "Ministry of Internal Affairs" had been trying to take over total control of African life. According to this witness, the control included the use of paid informers; this practice had become more and more widespread so that the African people were afraid to speak out unless they were sure to whom they were talking. Mr. Musikavanu (RT. 129, page 106) said the security laws had turned the country into a police state.

306. Mr. Mawema (RT. 128, page 121) drew attention to the activity of the "Government" in trying to frustrate the activities of the African National Council. This included steps to cut the organization off from all sources of funds. When the African National Council appealed to the people for donations, hundreds were arrested and detained in the rural areas for having donated to the organization. Mr. Mawema said that only two names of persons under detention had been published since they were arrested under a section of the law which did not require publication of the names (RT. 128, page 126). In effect this meant that the "Government" was removing the local leaderships of the people which left the way freer for them to get a counter-petition to the "No" referendum result.

(b) Land distribution and forced removal of Africans

307. Several of the witnesses referred to the use of the "Land Tenure Act 1969" as the legal instrument to force removals from their traditional lands and to

render Africans landless. Much of the testimony highlighted the uprooting of the Tangwena. Miss Todd (RT. 127, pages 67-70) stated that that tribe owned a plot of 17 square miles in an area called Inyanga, which they had occupied before the arrival of the white man in Rhodesia and that the tribe had for years resisted attempts to remove them. It had been reported shortly before the hearing of the Working Group that the most recent police sweep against the Tangwena had been made in helicopters. Their huts had been burned down and their crops destroyed. The Tangwena had fled their homes but their children had been cared for at a school on an African co-operative farm nearby called Nyafaru. The police had removed the children from that school to Salisbury, where they were virtually being held as hostages. Mr. Mawema (RT. 129, page 16) said his information was that the children of the Tangwena people were being kept in an old people's home, where they were fed by the "Department of Social Welfare". Their parents, he said, were scattered in the hills and across the border with Mozambique. Mr. Clutton-Brock (RT. 128, page 11) said that his information was that about 120 children had been removed.

308. Mr. Clutton-Brock cited (RT. 128, pages 31-35) several other instances of removals of African populations, among them in Wheya Reserve, where the people had had their crops destroyed and their fences torn up. The ensuing court cases had resulted in 65 people going to prison at one point and 50 at another and he believed the proceedings were not yet concluded. There had been trouble too, he said, in the irrigated areas under Chief Mutema and in Mutambara in the lowlands. There had also been cases of people being turned off mission land and European areas. These were the most recent cases he could recall.

309. Mr. Mawema (RT. 128, page 121) said people were being removed from Epworth Mission, the Shishawasha Mission and also from the Lelsetter area in the east of the country. These people were being removed from fertile land and land close to urban areas to far-off land in the Zambesi valley which is dry and where the only water available is from bore-holes and people have to walk long distances for water. In these resettlement areas no social or educational facilities were provided. People were left in the bush to survive as well as they could.

310. Mr. Clutton-Brock (RT. 128, page 7) said that no African had the right to be in any part of the land of his own country, in either African or European areas. In the African areas he was wholly subject to chiefs and headmen, who might not allocate him land and who were under very strong pressure by the "Ministry of Internal Affairs", which had increasingly taken over the areas of African life, agriculture, education and administration. Chiefs and headmen were summoned by the District Commissioner and warned they would not receive their cash allowances until all "subversive" talk ceased in their villages.

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311. According to an article which appeared in the press^{37/} (see Le Monde of 25 January 1973 and The Times of 20 January 1973), "from this week onwards, the provincial commissioners who administer the 'tribal lands' in Rhodesia are empowered to impose fines up to unlimited amounts on African communities without hearing their defence or applying to the courts. In default of payment, stock will be seized." If these reports are true, that will constitute collective punishment of Africans.

312. The Southern Rhodesian press proves additional examples of grave manifestations of colonialism and racial discrimination, among them the following

1. The Paper on Revised Policies presented to the annual conference of the Rhodesian Front in October 1972 contained the following significant points: ^{38/}

"There should be separate Health facilities for each community, and they should be sited, where practicable, within their respective Areas.

"Different cultures should be recognized in separate residential areas, and the occupation of shops in any particular area should be confined to the members of the community concerned.

"New towns should be established in the African Area; the aim should be that Africans employed in the European Area are housed in townships on adjacent African land (i.e. tribal); and no further African "home-ownership" (i.e. permanent tenure) should be permitted within the European Areas."

"The intent of the Land Tenure Act should be upheld."

313. Thirty-four hotels, restaurants and night clubs in Salisbury are believed to have received permits under the new law restricting liquor sales to Africans. ^{39/}

"They include the three main multiracial hotels in Salisbury - the Jameson, Ambassador and Meikle's hotels.

"Under the new regulations, which come into effect tomorrow, African bars in European areas will close at 7 p.m. on weekdays, 1 p.m. on Saturdays and close on Sundays and public holidays.

"The permits allow hotels to serve liquor to resident Africans after 7 p.m. on weekdays and 1 p.m. on Saturdays."

^{37/} See Le Monde, 25 January 1973, p.13, and The Times (London), 20 January 1973, p.5.

^{38/} Property and Finance, No. 200, October 1972, Salisbury, p.3.

^{39/} The Rhodesia Herald, 31 October 1972, p.4.

314. The Rhodesia Broadcasting Company has banned two well-known personalities - author and chairman of the Settlement Council, Bob Cary, and actress Beryl Salt 40/. The ban stipulates that neither should be connected in any way with programmes on the General Service. Programme announcers have been given written instructions that their names must not be mentioned and that their scripts must not be used. Mr. Cary was critical of the "appalling sterility" of the Rhodesian Broadcasting Corporation and of Rhodesia TV. "Their only governing policy is a negative one - not to harm relations between the races," he said. "But they do nothing to improve relations between the races either."

(d) Trade union rights and employment opportunities

315. Mr. Musikavanu (RT. 129, page 106) said segregation in employment was not legal but administrative and functioned by virtue of the reservation of jobs for the white worker. This policy was to keep the voter in employment, and the voter was of course white. Instead of training African artisans, white immigrations were encouraged. Many school-leavers were unemployed as a result of the job reservation policy.

316. Mr. Valticos, the representative of the International Labour Organisation (RT. 131, page 26), told the Group that the ILO had no information on Rhodesia because it no longer had direct contact with the Salisbury régime and because the British Government, which bears official responsibility for the Colony, declared that it was no longer in a position to provide information.

317. Available information indicates that the Smith régime has no regard for trade union rights. On 25 June 1972 the régime used the army to break the strike of busmen in Salisbury and Bulawayo which had been staged on 12 June in support of their wage claim to the bus company. Sixty drivers in Salisbury were convicted for taking part in what the régime described as an illegal strike, and another 67 were prosecuted in Bulawayo. 41/

318. The disparity in employment opportunities between Europeans and Africans is revealed in the following figures given by the "Minister of Public Service", showing the racial distribution of government employees in established positions as at 31 December 1971: 42/

| | |
|-----------|--------|
| Europeans | 10,842 |
| Africans | 827 |
| Coloureds | 254 |
| Asians | 13 |

319. Additional evidence of racial discrimination against Africans may be seen in the wide gap in average earnings between Europeans and Africans. The figures are for the year 1970. 43/ The comparative figures showing the number of

40/ The Sunday Mail, Salisbury, 5 November 1972, p.1.

41/ Financial Times, London, and Guardian, London, 27 June 1972.

42/ Hansard, 28 July 1972, col. 1692:

43/ Monthly Digest of Statistics, June 1971.

Europeans and African workers and their average earnings per sector are given in the table below.

| Sector | No. of Employed | | Average Annual Wage | |
|-----------------------|-----------------|-----------|---------------------|----------------------|
| | Africans | Europeans | Africans Rhod.\$ | Europeans Rhod.\$ |
| Agriculture | 306,300 | 4,360 | 153 | 2,457 |
| Mining | 52,200 | 3,650 | 334 | 4,456 |
| Manufacturing | 103,600 | 20,100 | 478 | 3,606 |
| Electricity/Water | 4,200 | 1,520 | 448 | 3,840 |
| Building | 48,400 | 8,560 | 428 | 3,273 |
| Finance/Insurance | 2,800 | 7,140 | 714 | 3,280 |
| Restaurants/Hotels | 46,600 | 20,460 | 454 | 2,654 |
| Transport | 17,500 | 4,910 | 626 | 3,600 |
| Public Administration | 27,600 | 11,960 | 409 | 3,129 |
| Education | 20,600 | 6,400 | 590 | 2,709 |
| Health | 7,600 | 3,310 | 579 | 2,388 |
| Domestic | 113,100 | Nil | 256 | Nil |
| Other | 25,300 | 9,320 | 430 | 2,442 |
| Total: | 775,800 | 106,700 | 312 | 3,104 |

It will be seen that the average earning for a European is Rhod.\$3,104 while that for an African is Rhod.\$312.

(e) Co-operation between South Africa and the illegal régime in Southern Rhodesia

320. Witnesses said that indications of the co-operation between the two régimes consisted in their increased police and military co-operation, but also in the use of apartheid as a model for the practice of racial discrimination in Rhodesia.

321. Mr. Musikavanu (RT. 129, page 102) said the Rhodesian policy was called separate development but it was in fact apartheid in substance. The effect of segregation laws like the Land Apportionment Act of 1960 which had merely been turned into the "Land Tenure Act" of 1969, was to divide the land rigidly into white and African areas. The "Land Tenure Act" had consolidated the policy of apartheid in Rhodesia. The towns were in the "white" areas which meant that Africans lived there on sufferance. In the urban areas the Urban Areas Act divided residential areas further into African townships and white suburbs. In the white suburbs no African domestic servant could have his family with him or

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educational or other facilities where he was working. Amenities were being segregated (RT. 129, pages 103-105) and Africans lived under humiliation regardless of the standard they had attained. Mr. Mawema (RT. 129, page 6) agreed that the "Land Tenure Act" was the basis of discrimination and racialism.

322. On direct co-operation between the régimes, Mr. Ennals (RT. 130, page 61) stressed that there was very close co-operation between the police forces of southern Africa and certainly between the Rhodesian and South African police. Mr. Clutton-Brock (RT. 128, pages 57-60) said there was substantial police aid in the Zambesi Valley, which was generally conducted "behind the scenes". He knew of South Africans having joined the Rhodesian police force.

323. Several witnesses, among them Mr. Moyo (RT. 129, page 82) and Mr. Ennals (RT. 130, page 67) cited instances of Rhodesians who had been refused asylum in other southern African countries and returned to Rhodesia. Mr. Ennals said there had been 18 or 21 persons who had been returned to Rhodesia from Botswana because other Member States of the United Nations were not willing to grant them asylum. Mr. Moyo (RT. 129, page 66) referred to 21 persons who had been deported from Botswana back to Rhodesia. He said (RT. 129, page 82) that there were 129 freedom-fighters who had been in Zambia but had been deported back to Rhodesia. Of these four had been sentenced to death and 18 to prison for periods ranging from five to 15 years.

324. Mr. Ennals expressed concern (RT. 130, page 38) at the growing frequency of the detention of convicted political prisoners after their sentences had expired. There were numbers of such prisoners held, some at Gonakudzingwa, 26 at Salisbury Remand Prison and an unknown number at Gwelo Prison. He suspected (RT. 130, page 39) that the reason for their continued detention was that these persons had not been prepared to give some form of loyalty undertaking to the present "Government". Continued detention of such persons was a contempt of the court which had originally imposed the sentence, and was a total arrogation of authority to the police to override the decisions of the courts.

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V. AFRICAN TERRITORIES UNDER PORTUGUESE DOMINATION

325. The Ad Hoc Working Group of Experts examined, in 1972, testimony from 44 persons relating to the African Territories under Portuguese administration during the course of meetings held in London, Geneva, Nairobi, Dar es Salaam, Lusaka, Brazzaville and Kinshasa.

326. As during its previous field trip to Africa, the Working Group heard witnesses who had come from battlefields in Angola and Mozambique to give evidence of recent occurrences which they had experienced. After presenting their evidence, these witnesses returned to the combat zones.

327. The Working Group did not have the opportunity to hear direct evidence relating to Guinea (Bissau). However, it notes with concern the evidence concerning the intensified acts of repression, killing of people, the bombardment and destruction of villages, hospitals, schools, cultivated fields, crops and livestock of the inhabitants, and other atrocities committed by the Portuguese forces in that Territory. Such evidence is contained in the reports of the visit in April 1972 of the Special Mission to the Liberated Areas of Guinea (Bissau) of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, as well as in the statements made to the Special Committee and at the twenty-seventh session of the General Assembly by Mr. Amilcar Cabral, Secretary-General, Partido Africano da Independencia da Guiné e Cabo Verde (PAIGC), who was assassinated in Conakry on 20 January 1973. 1/

328. The international standards concerning capital punishment, the treatment of political prisoners and grave manifestations of colonialism and racial discrimination have been comprehensively dealt with in a previous report of the Ad Hoc Working Group of Experts (E/CN.4/1020) and references to such standards are made in chapter I of the present report.

1/ See A/8723/Add.3 and A/C.4/SR.1986.

A. CAPITAL PUNISHMENT IN THE AFRICAN TERRITORIES UNDER
PORTUGUESE DOMINATION

1. Statutory provisions

329. A summary of some relevant laws relating to capital punishment has been given in chapter XXI, section A, of the report of the Ad Hoc Working Group of Experts to the Commission at its twenty-sixth session (E/CN.4/1020/Add.1). There have been no changes in the Portuguese laws in this matter.

2. Analysis of evidence

(a) Evidence concerning Angola

330. Mr. Makina Mwonyo testified that his wife and the wife of his young brother were captured by Portuguese soldiers in Muye, district of Moxico, Angola. They were asked to lead the Portuguese to the camps of freedom-fighters. All the people who lived in the camps, including his uncle and other relatives, were captured, put in vehicles and taken across a small stream called Chikului. They were beaten severely and taken to a prison camp where army barracks were located. According to Mr. Mwonyo, his grandmother and other people who had run away from the secret barracks reported to him that three days after their imprisonment his grandfather Chinjana and his uncle Kapalingua had been killed by the Portuguese soldiers and thrown into the Muye River. Reportedly, the soldiers butchered his grandfather before he arrived at the barracks, having cut off his testicles. The witness testified further that the Portuguese soldiers raped his wife and his young brother's wife, each several times, and later (on a Sunday in March 1972) murdered them and threw their bodies into the Muye River. He said that his two-year-old son, who was with the two women, was beaten and left for dead, but that a friend of his, a black Angolan soldier, was present when the Portuguese removed the corpses and found that his son was not dead. The soldier hid the child somewhere in the bush and managed to lead the witness to where his son was hidden. Mr. Mwonyo states that his son was scarred, having lost the fingers on one hand (RT.139, pp. 47-65).

331. Mr. Lumeu Chikulu testified that in April 1972 the Portuguese attacked his village Chimowole, Moxico District, in the eastern part of Angola. Having captured the entire village of about 100 people, young and old, they took all the people to one of the strategic camps, or ndandanda, in the district of Vunonge. The following morning the Portuguese administrators started to ask each one of the captured Angolans why they had chosen to remain in the jungle, living with guerrillas. When the village headman answered that the people had chosen to fight against colonialism, the whole group was put in prison in the Kanganamba District, from which he managed to escape with two friends, Jonas Alberto and Joao Jelamiya, to join the MPLA freedom-fighters. The witness stated that the Portuguese soldiers selected five from among the captured group, including the village headman, tied their legs and arms, executed them, sprayed petrol on them and burned them to ashes (RT.139, pp. 66-80).

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332. Mr. Yata Nsamba testified that he joined the special group of the Portuguese forces for blacks only, called the G. E., in November 1971, and stayed with the group for 24 days. He stated that on 24 December 1971, the Portuguese called together all the people confined in the strategic village of Kameya, in the Moxico district, Angola, and asked them what they wanted for Christmas. Chief Mayengu, Chief Kapapelo, Chief Kameya and Chief Muzaza, who were living in the ndandanda, asked if they could go hunting for meat. The Portuguese then announced to all the people congregated there that their chiefs had asked permission to go hunting for meat, knowing full well that there were guerrillas in the bush. According to Mr. Nsamba, instead of letting them go out the Portuguese decided to kill all the chiefs, shooting them in front of everyone, butchering them and cooking their flesh. On 25 December 1971, the Portuguese soldiers allegedly called all the people together, including the witness, and forced them to eat the chiefs' flesh at gun point. Mr. Nsamba assured the members of the Working Group that he had not only witnessed the facts reported by him, but that he had eaten the flesh of the chiefs himself (RT.139, pp. 81-100).

333. Mr. Muila Mavungo testified that he had been a political prisoner at São Nicolau prison from 1963 to 1971 and that whenever prisoners were caught in an attempt to escape from that prison they were made to cross their arms and were then executed by rifle fire. He cited the cases of José Pambo, said to have been killed, and of five other political prisoners who were caught escaping and were killed on the spot (RT.140, p. 36).

334. According to testimony given by Mr. Luis Sebastian Mateus, in 1961 he had been a political prisoner at Quitexe Prison, Angola. His hands were tied behind his back with wire and he was confined to a small cell of little more than one square metre, where he could only remain standing. He stated that he was often beaten by the police until he collapsed on the floor, that during the two weeks of his imprisonment he went without water and that the only thing he was given to eat consisted of two human ears removed from the body of his comrade Moises Antonio, a man from Combatela, who had been killed in prison. The witness stated that he had been tried in a military camp and condemned to death because he was the son of an assimilado. Mr. Mateus said that a few days before the execution date he had been taken out of the cell to get some sun and escaped while his guard went to drink some water. He stated further that his parents, four brothers and sisters had been arrested in the village of Luege and imprisoned with him in Quitexe Prison. His father was still in that prison, he said, but his mother and brothers and sisters had been killed by the Portuguese, allegedly to prevent his father from running away (RT.140, pp. 51-62).

335. Evidence given by Mr. Manuel Miranda indicates that he and two other freedom-fighters fell into an ambush on 25 October 1971 near the Lué River, when they were travelling from Quissingueta to Quixico. The witness stated that they were arrested, that his two comrades were shot, pierced by bayonets and killed on the spot, and that he was badly beaten and taken prisoner 2/ (RT.143, p. 3).

2/ See also para. 371 below.

336. According to Mrs. Marta Fernandes de Brito, on 1 June 1972 she was on her way to a plantation in the Mata-Kanga area, Angola, with her sister-in-law and two boys, when they were attacked by Portuguese soldiers who had infiltrated into the cultivated field. The witness stated that she managed to run away, but that the soldiers captured her sister-in-law and the two boys and killed them (RT.143, pp. 27-28).

337. Mr. Pedro Vida Garcia stated that on 17 July 1971, during a raid carried out by the Portuguese military forces and the militia, several people from the village of Muenga, Angola, were burnt to death with all their possessions. They had been accused of harbouring members of their families, who were allegedly either part of the nationalist movement or who received correspondence for the guerrillas. After the operation, which was carried out at night, the following were found to be victims: the family of Manuel Antomica, Marcelo Ngongo, Adao Kinguengu and his wife Nsumba, together with their children. The witness testified further that on 28 November 1971 members of a guerrilla cell in the village of Mussela were arrested, tortured and subsequently assassinated in a cruel manner, following a raid by the Portuguese forces. Reportedly, among those killed were Moises Tussamba, Nsambo Gozo and Mwana Vakasi, all freedom-fighters. According to witness Vida Garcia, the village of Catalambanza, district of Zaïre, was the object of a similar raid on 8 February 1972, when its houses were burnt down with the use of incendiary bombs and grenades and many people burnt to death. Mr. Vida Garcia further alleged that 250 young Angolans from different rural schools were arrested by the security police (DGS) on the grounds of activities against the State and were savagely assassinated in September 1971 in the neighbourhood of Luanda. In a further incident, occurring in July 1972 on the road linking Enrique de Carvalho with Malange, Portuguese troops attacked a group of refugees, allegedly spraying them with herbicides while at the same time machine-gunning them and wounding them badly (RT.143, pp. 46-56).

338. According to Mr. Domingo Sebastiao Sobrinho, if the Portuguese infiltrate the nationalist areas and catch an indigenous Angolan in the forest, the latter is killed on the spot. The witness claimed to have seen his fellow Angolans murdered after having been tortured, while he was in the Uige region working for the Portuguese administration. In particular, he cited the case of João Neto Serafin, a certified nurse in the Luanda Central Hospital, accused of having collaborated with the guerrillas on 20 January 1970, whose eyes were said to have been gouged out after which he was killed. The witness stated that many student nurses were killed by the Portuguese on 4 March 1970, citing the names of Carlos Domingos Agostinho, Goncalito Manuel Jr., José Francisco Horacio, Adriano Feijó and Jorge Ferjó Neto. People from other professions were killed as well, he said, such as Joaquim Lucas, Joas Moniz and Antonio Salvador Caifalo (RT.143, pp. 62-65 and 66).

339. Mr. Sebastien Lubaki stated that according to information received by the Democratic Party of Angola from the Eastern region, over 3,000 indigenous Africans were killed and over 17,000 arrested in order to be transferred to the concentration camps in the Mocâmedes desert. Reportedly, many of the arrested joined the guerrillas after walking for many days. Mr. Lubaki stated that in March 1972,

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at around 4 a.m., the Portuguese forces surrounded the Luanda African quarter of Sambizanga where the indigenous inhabitants were assaulted by security brigades and police, who broke down the doors of their homes and violently struck men, women and children without distinction. Reportedly, the purpose of this search was to try to find weapons smuggled by an Angolan party which was allegedly planning to incite disturbances on the occasion of the celebration of the outbreak of the revolution on 15 March. According to the witness, six persons accused on a presumption of guilt were killed by the Portuguese forces. Among them was a mother of two children, Mrs. Isabel Jovita, who was originally from Nambuangongo, and whose husband, Luiz Romeira, had been murdered in the same village on suspicion of attempts against the security of the State. Others executed included Rui Mesquita, a native of Dembos who lived near Casa Branca, and Manuel Koko, a chauffeur from Ambrizette, who was visiting relatives in Luanda. The witness stated that a similar event took place in Uige on 13 July 1972, in the course of which two young Angolans were killed (RT.142, pp. 6-7).

340. According to Mr. Lubaki, the Portuguese commandos subject the freedom-fighters they capture to the cruelest tortures while interrogating them about the position of the guerrillas, and then kill them. Very often it happens that, in the areas where it has been made difficult for the Portuguese forces to get about, the African prisoners, after being interrogated and tortured, are forced to serve as guides in the bush before they are finally killed. Mr. Lubaki testified that for the year 1971, the year-end reports of the operational commands of the three combat fronts of the Frente Nacional para a Libertação de Angola (FNLA) lists 32 African soldiers of the Armée de libération nationale de l'Angola (ALNA) as having been captured by the Portuguese forces. Of this number, eight were said to have been executed in loco, after being tortured; 12 killed at the Portuguese bases after torture and interrogation; and three killed after having been used as guides following subjection to torture and interrogation. Seven others are said to have disappeared and two to have succeeded in escaping. The witness testified further that on 22 September 1971, following a large offensive against the nationalist sector near the village of Cazage, Eastern Angola, the Portuguese forces succeeded in capturing eight wounded ALNA freedom-fighters, who had been at a first-aid post during the course of the operations. In spite of their condition, the Portuguese forces are said to have taken them and paraded them in the villages under Portuguese jurisdiction, in order to intimidate the indigenous inhabitants and the Portuguese finally killed them in front of a gathering of peasants who had been invited to see the execution. Their bodies are said to have been burned with petrol (RT.142, pp. 12-37).

341. Mr. Lubaki supplied the following list of Angolan freedom-fighters captured and killed by Portuguese forces in Angola:

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"Angolan soldiers captured by Portuguese forces in Angola and subsequently assassinated"

Sources of information: (a) party cells and partisans living in the Portuguese sector clandestinely; reports from ALNA operational commands

| <u>Name</u> | <u>Date</u> | |
|--|-----------------|---|
| José Tshissengue | 17 January 1971 | Wounded, interrogated on the ALNA operations; his body cut to pieces. Sumbo/Lunda. North Eastern front. |
| Samuel Koko and Antonio Alberto | 23 March 1971 | Wounded; taken to a military post in the region of Musserra, interrogated and tortured. They were killed by the sword in front of the whole unit. Musserra/Zaire, North Central Front. |
| Ernesto Chilunga | 28 March 1971 | Captured by an enemy patrol, which had infiltrated the guerrillas, when travelling from one strategic village to another together with another soldier, who was killed. He was tortured, interrogated, used as a guide by the Portuguese patrol and was killed on 2 April at Cahungula/Lunda, North Eastern Front. |
| José Tshiwaka | 1 April 1971 | Captured after a nationalist operation against a Portuguese garrison on the area of Alto-Tshikapa. Fate unknown. Alto-Tschikapa/Lunda Eastern Front. |
| Maria Helena Futila | 1 April 1971 | Wounded and taken to the Portuguese post of Nova Chaves. She was raped, tortured and killed on 20 April. Nova Chaves/Lunda Eastern Front. |
| Joao Nunes Gabriel | 2 May 1971 | Captured in the course of an ALNA operation against the town of Kibaxi. Tortured, interrogated, served as guide to Portuguese units, and succeeded in escaping on 19 June in the course of one of those missions. North Central Front. |
| Rui Pascoal Capapela, Ernesto Gomo and Manuel Chitundo | 23 May 1971 | Wounded, having been part of an ALNA first-aid team. Captured in the jungle by Portuguese forces while carrying an old, sick person to a nationalist medical-social post in the region of Cazage. The sick person was killed on the spot while the soldiers were tied together and thrown from the helicopters in full flight. Lunda Eastern Front. |
| Armando Kafumu | 5 June 1971 | Captured at Dondo/Luanda. Fate unknown. |
| Gabriel Landu | 12 June 1971 | Captured in the course of a flash operation in the Portuguese commercial centre of Muxauluando. Tortured and interrogated for 10 days. He was tied to a wagon and dragged for several minutes along one of the main streets, and from this he died. Luanda North Central Front. |

| <u>Name</u> | <u>Date</u> | |
|--------------------------------|-------------------|---|
| Cristina Kilengue | 12 June 1971 | Wounded, left under the protection of a comrade - who was later killed - at Santa Cruz North Eastern Front. Fate unknown. |
| Pedro Kingengo | 15 June 1971 | Captured in the course of a nationalist attack against a guarded plantation over the mountains. Killed outright. North Central Cuanza Front. |
| Kutu Kitonda | 30 June 1971 | Wounded; captured in the course of an operation against the Portuguese military air force at Toco after being wounded by grenade shrapnel. Killed after torture and interrogation. |
| Jorge Makandi | 5 July 1971 | Captured in the course of a flash attack of the nationalists against the sugar company of Angola in Caxito. Tortured and interrogated; served as guide to Portuguese forces and succeeded in escaping in the course of one of those missions on 2 August 1971. Caxito/Luanda North Central Front. |
| Miguel Tufu and Joao Marcos | 9 August 1971 | Captured by Portuguese forces which had infiltrated the liberated sector of Luso. Tortured and assassinated. Luso/Lunda Eastern Front. |
| Reis Zombo Zinga | 19 August 1971 | Captured by Portuguese forces which had infiltrated the nationalist sector of Lubalo. Tortured, interrogated, served as guide to Portuguese units, which killed him in the course of one of those missions. Lubalo/Lunda North Eastern Front. |
| Mputu Makiadi | 7 September 1971 | Captured after being wounded in the course of an operation in Muriege. He was burned alive in front of the administrative post of the town in the presence of OPVDCA units. Muriege/Lunda Eastern Front. |
| Bernando Futila | 23 September 1971 | Captured in the course of an ALNA operation against a Portuguese military post at Tembo. Tortured and interrogated, and assassinated on the same day. Tembo/Malange North Eastern Front. |
| Miguel Moises | 3 November 1971 | Captured while on patrol following an enemy ambush at Camaxilo/Lunda. North Eastern Front. Fate unknown. |
| Caluis Tshimutira | 12 November 1971 | Captured while on patrol as a result of an enemy ambush. Fate unknown. Dendo/Luanda North Central Front. |
| Kuti Kamulette | 11 December 1971 | Captured after being wounded by a grenade explosion while he was travelling alone from one village to another in the Bembe sector. Taken to the Bembe post, tortured, interrogated, and then killed. |

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Most of the assassinations in the bush are carried out by means of knives."
(RT.142, pp. 16-20)

(b) Evidence concerning Mozambique

342. Mr. Corneliu Conforme Chauque testified that in March 1971 he witnessed the massacre of 15 persons, including three children, by Portuguese soldiers in the village of Matundo, Mozambique, when the village people allegedly refused to say whether they were hiding or feeding persons who were passing through the area. The soldiers are said to have beaten the children against the trunks of trees. Mr. Chauque stated that on 3 March 1971 he saw Portuguese soldiers question a boy coming on a bicycle from Moatize, proceed to throw away his bicycle, burn his belongings and finally beat the boy until he fainted. The witness also reported that on 24 June 1971, following the chasing of young girls from a Catholic mission in the Moatize area, Portuguese soldiers "did anything that they felt like doing" until the priest returned to the Mission, at which point they ran away. During the foray, a soldier reportedly took out his dagger and pierced the neck of a young man from the Mission school, who later died at the Maotize hospital.

343. Mr. Chauque testified further that, following the explosion of a mine on 3 April 1972, which damaged an army vehicle on the road from Moatize to Zobwe, the Portuguese soldiers went to the village of Mbola and asked the people if they had heard the explosion. As the answer was negative, the soldiers allegedly took all the pregnant women they could find, murdering three by cutting open their stomachs with bayonets and pulling out the foetuses, and killed other women who were not pregnant with bayonets or by blows on the head. According to this witness, the soldiers went through the village to kill the pregnant women because, they said, "if we let the pregnant women survive, FRELIMO will never be eliminated". Mr. Chauque stated that, in addition to this massacre of women, he had witnessed the killing of a 17-year-old boy from a technical school. The boy and two friends from school were reportedly crossing the Zambezi River bridge on their way from Tete to Matundo, in September 1971, when the three were confronted by Portuguese soldiers. When they refused to say where they were coming from, they were chased by the soldiers; one of the boys was caught and thrown into the river, where he drowned (RT.135, pp. 96-111).

344. According to evidence given by Miss Mariana Matola, native people of Mozambique were taken away from their villages and forced to live near the roads. Food was insufficient and the cultivated fields were far away. They were continuously asked whether they liked FRELIMO. If the Portuguese met them, they were beaten up and all their stocks of cattle and fowl stolen. Realizing that they were to be persecuted, these people slowly began to move away from the area, but after they had all left, they were chased and caught one by one. Those who were in hiding were hit by bombs dropped by Portuguese aircraft. According to the witness, on a particular day 10 people died as a result of the bombings. Those who could run managed to get away, but some were wounded and remained where they were. In the meantime, other native people of Mozambique were confronted by the Portuguese and coaxed into coming back with the soldiers to live with them, side by side. The Portuguese soldiers, having persuaded a few of the natives, allegedly locked them in houses to which the

Portuguese then set fire. The witness proceeded to say that she, her brother and a group who had tried to cultivate land in areas relatively remote from the Portuguese forces, had their fields and crops bombed one day in 1968 and, in order to survive, decided to go back and try to salvage whatever food they could find in their village. On their way back they fell into an ambush near the village of Catur, in the district of Niasa. Her 16-year-old brother, Akimo Saidi, was killed outright by a bullet wound in the heart, and after he had died, the Portuguese soldiers are said to have started cutting him to pieces with knives.

345. Miss Matola stated that she then joined FRELIMO but did not stay long in that particular village, because the Portuguese forces attacked the base and killed three of her comrades. She further reported that when she was at Gungunhana base, her group was spotted by Portuguese aircraft and four other comrades, aged 14 to 15, were killed. Two of them, called Amina and Cuanturo, were killed in June 1969 by soldiers landing in helicopters (RT.136, pp. 6-16).

346. According to evidence given by Mr. Silvestre Mueda, four natives from Mangasa, Cacha Cacha, Leso and Lyambedo, Mozambique, who were trying to escape being recruited to work for the Portuguese army at the strategic village of Chai in the central district of Pemba, were put into a vehicle and taken to a valley where they were shot to death by a group of soldiers who surrounded them. Reportedly, none of the executed was buried (RT.136, pp. 17-20, 22-25, 31 and 36).

347. Mr. Ernesto Erbert Njolomola testified that one day in July 1970, Portuguese soldiers came to the village of Chimpene, in the province of Tete, Mozambique, imprisoned him and his parents, tied them with wire, beat them and took them to the Furancongo administration. There they were again greeted with blows and asked whether they knew anything about the FRELIMO guerrillas. As they gave a negative reply, the Portuguese are said to have beaten them with a whip and with a palmatoria. 3/ For the next few days, they were subjected to forced labour, escorted by Portuguese soldiers. Afterward the soldiers would tie them up and take them back to the prison where they were given bad food. Very often they went to sleep without eating and from time to time were given only salt to eat. After staying in the prison for some time, they were released.

348. Mr. Njolomola stated that the Portuguese soldiers came a second time to his village, destroyed his family home and took away all their belongings: chickens, livestock and so forth. This time he and his parents were taken to Tete, where they were allegedly beaten severely for a long time and then left in chains to sleep. As they again denied any knowledge about FRELIMO guerrillas, the Portuguese

3/ The palmatoria or paddle is described as a large wooden instrument with a handle rounded at the end with many holes in it. This instrument is gripped and struck forcefully on the open palm of the hand, where the holes have a suction effect on the flesh, so that each blow causes intense and increasing pain. Sometimes it is said to be used to strike the foot or buttocks. See E/CN.4/AC.22/21, para. 22.

reportedly said: "No, you are hiding, concealing the guerrillas; we know this full well, because they are members of your own family." Then the witness and his parents are said to have been beaten again and warned that if they did not tell the truth they would be killed. According to Mr. Njolomola, the Portuguese soldiers came back to the prison and allegedly cut off his mother's fingers and toes in his presence and tried to force her to eat them. The witness states that his mother, Mrs. Aphale Talabuko, was chained up when the soldiers forced her to put her fingers on a block of wood and cut them off with a knife. She was taken to a hospital for two days, and when she came back, after being beaten, she died. This witness states further that when he was called in to be informed of the death of his mother, the police had tried to force him to cut off a piece of her body to eat. As he refused, the police began to beat him. They finally released him, after a few more days in prison, because he was a minor (RT.136, pp. 41-61).

349. Written evidence submitted by the Women's International Democratic Federation contains the testimony of Mrs. Joanina Moka, who stated that on 24 April 1971, when she was coming from village to Kumemba in the district of Mueda, Mozambique, to take her baby daughter to a doctor, she was chased by Portuguese soldiers. As she tried to run away from them, the soldiers fired shots, which hit her shoulder and her baby's leg. She states that she and her baby had been left in the bush as dead; later they were taken by FRELIMO fighters to a hospital where her baby's wounded leg was amputated. 4/

350. According to written testimony from Langton Notisse submitted to the Working Group of Experts in Dar es Salaam, in July 1971 the Portuguese soldiers came to the village of Froco. They arrested José Saidi and asked him if he knew where the "terrorists" were. As he replied that he did not know, they put a rope around his neck and pulled it through the ceiling of his hut, and started pulling. José Saidi was suspended by the neck in front of all the people of the village. Mr. Notisse stated further that in July 1971, near the village of Chinanga, a man named Dique was coming from his fields carrying an axe. The soldiers accosted him and asked him where he was coming from. He answered that he was coming from his field. Then the soldiers asked him for his axe, separated its head from the handle and with the handle they hit him on the head, killing him. The soldiers took the body with them. Later, the witness stated, he found the body in the bush eaten by the dogs and the pigs. He recognized Dique because of his clothes, as his face had already been completely eaten away. The witness also stated that in the same month, an army truck was destroyed by a mine near the village of Candomire. The soldiers came to the village and started hitting the people with sticks. One man and one woman were killed by the blows. The soldiers took the bodies to Changara, put them on top of a wood pile, sprayed it with petrol and set it afire.

4/ "Les femmes d'Afrique du Sud, d'Angola, du Mozambique, du Portugal témoignent contre l'apartheid, contre la terreur colonialiste et fasciste", Documents et informations No. 5/1971, Berlin, Federation Démocratique Internationale des Femmes, pp. 14 and 15.

351. According to written testimony submitted by Mr. Duarte Namashinga, he and a group of 10 persons, eight of them women, and a small baby - all civilians - were ambushed near Namopa on 25 September 1971. The witness stated that the Portuguese army opened fire and shot dead his friend Estevao as well as a woman whose father is called Andola. The others were captured. At the beginning the soldiers wanted to kill everyone, but they finally decided to keep the remaining prisoners alive to interrogate them. Allegedly, the soldiers raped all the women, the witness's sister included. In prison he was beaten on the head and all over his body but that he managed to escape in January 1972.

352. According to written testimony submitted by Mr. Macossa, in 1971, in the village of Daqui, Portuguese soldiers came to punish the people, whom they accused of helping FRELIMO. Eighty soldiers arrived, taking everyone they suspected of being connected with FRELIMO. The witness stated that the soldiers ordered them to dig holes and afterwards shot them. Many were killed. Among the dead was Tembo Malizani, whom the witness knew well.

353. According to written testimony submitted by Mr. Machaia Duwa, Portuguese soldiers came to the village of Moganil in April 1972, ambushed and captured a native farmer and arrested him, his wife and daughter, and their son-in-law. The soldiers reportedly tortured them in order to get them to indicate where the "turras", or soldiers of FRELIMO, were. Then they tied up the prisoners, the witness said, and after having them strip completely, made a fire with wood and with pieces of the burning wood, burned the sex organs of the men and women. The witness stated that he did not know the names of the two women, but knew the names of the father, Mogani, and of the son-in-law, Murema. The soldiers are also said to have ravaged the village and to have stolen 90 pounds (Rhodesian currency), and also to have killed their cattle. Mr. Duwa stated further that in May 1972 the Portuguese forces ravaged the village of Duwa Songo, stole and killed cows, donkeys and goats and stole clothing as well. He said further that in February 1972, when the soldiers approached the village of Xidecunde, the people tried to escape, but that 16 villagers were captured, including men, women, some pregnant, and babies. Reportedly, the Portuguese locked them in a house and then threw a grenade inside, killing all except one woman, called Madigei, who suffered the loss of an arm, blown off by the grenade.

354. In written testimony, Mr. Alexandre Franco Nkhalamba Thawe, complained that he had witnessed many crimes while under detention, including 16 cases of direct murder or of death caused by violence. The last case involved a group of 40 persons imprisoned at Machava. Denounced by infiltrated agents, they were submitted to cruelties and threatened with death if they refused to betray their cause or their comrades inside and outside the prison. They were locked in special cells, the witness said, stripped and watered down two or three times a day with a hose. They went several days without food, were deprived of drinking water, and when they were given food it was very salty. He stated that 12 people died as a result of this treatment, between April and October 1970: Joao Maduna, Alberto Mudao, Bila, Jaime Nhantumbo, Carlos Juma, Alexandre Nchicoma, Joao Agostinho Chitete, Jose Salimo and two other persons whose names he did not know.

355. Written evidence submitted by Father Luis Afonso da Costa, 5/ recently expelled from Mozambique, gives the following chronological account of massacres and killings of black Africans in approximately one third of the area of the Tete district:

On 4 May 1971, Portuguese troops shot and killed a man named Aroni (Mucumbura).

On 7 May 1971, the Portuguese army killed 14 peasants from Kapinga and Catacha. Their names were: Guidibo, Mariamo, Grizi, Zeze, Tapureta, Caropora, Fungurane, Pitroce, Maizi, Matias, Kenete, Diquissoni, Langisse and Jona.

On the same day, at Mahanda, troops killed Chimuchamu, Ringuitioni, Joane, Pensura, Wachení, Gomo, Sanhadadza Saimoni.

On 8 May 1971, the army killed four persons near Mr. Gabriel's store in the village of António. The names of the victims were: Januário (fumo), Charedzera, Kasswasswaira and Chirega.

In July 1971, the army killed Mr. Therere at Estima.

In late July (?) 1971, the following were dead /sic/ at Chicôa: Augusto Fone Chirenje and Luciano Clement, both from Chinchanda (Estima).

On 23 August 1971, OPV killed Mr. Patrício at Maiyombe after tearing up all the identification papers in his possession.

On 26 August 1971, the Commandos shot and killed António Neti, aged 10, at Inhamajanela.

Between 3 and 9 September 1971, the Rhodesian army came to assist the Portuguese troops and massacred 18 persons. Their names were: Jacob Zenda (aged 18), Sanfur Aroni (aged 12), Paulo Zirise (aged 12), David Jorge (married), Pini, Singa (an old man), Rónica Singa (married and pregnant), Matiguiiri (married), Retina (married), Ester (married), a baby belonging to Ester and another belonging to Matiguiiri, a girl aged 10, two boys between the ages of 12 and 14; two bodies were unidentified. Of those whose names are given, all from Singa down to the end of the list were burnt after death.

On 9 September 1971, guerrillas killed Chief Chiundiza.

On 14 September 1971, the Commandos forced Sande Dausse (aged 15) to act as a guide for them. He lost his life in a clash between guerrillas and troops at Inhacamba.

5/ "Encore une année d'agonie... sans espoir de resurrection", Diocèse de Tete, Mozambique, mai 1971/mai 1972, pp. 1, 2 and 3. Paper submitted to the Ad Hoc Working Group.

On 16 September 1971, guerrillas went to the strategic village of Mfidzi and killed Mr. Ferrao Coelho.

On 19 September 1971, at Cateme, soldiers killed Passagem Vinho, after torturing him, because he kept asking for the money they had stolen from him.

On 30 September 1971, at Cambewe (Moatize/Tete), troops killed seven persons: Chandiguera (married - aged 60), Agostinho Chandiguera (married), Sòzinho Chaguluka (aged 25), Cinto Chandiguera (married), Eduardo Chandiguera (married), Kalua Siale (physically deformed, aged 25) and one person unidentified. They did not question the victims. They simply shot them.

In late September and early October 1971, troops threw two bombs at Inhagalankope, killing Mapalata (married) and Duzíria (married).

On 23 October 1971, soldiers shot and killed three workers for Ermoque (the company which is building the Tete-Songo road) at the village of Inhamachola. Their names were: Sinalo Tacho (married), Vunzani Sani (married) and Mauzissi Salamaia (married).

On 4 November 1971, Commandos burnt 16 persons alive at the village of António (Mucumbura). The victims' names were: Helena (wife of Chief Buxo, who was killed by FRELIMO), Ester Helena Buxo (aged 10), Margaretta Helena Buxo (aged 8), Maria Helena Buxo (aged 6), Tarifei Helena Buxo (aged 1 month), Majozi (aged 65), Rute (married), Kufa Rute Chidekunde (aged 13), Massa Ruto Chidekunde (aged 8), Rosa Rute Chidekunde (aged 6), Rebeca Rute Chidekunde (aged 7 months), Dzudzai (married - aged 20), Rorosi (aged 2), Haiti (aged 70) and two other persons whom the missionaries were unable to identify. Near Mr. Gabriel's store were the bodies of five other persons burnt beyond recognition. Among them was the body of a child 2 or 3 years of age.

On 12 November 1971, Mr. Caldas, head of OPV, killed Keni Dirao at Inhacapiriri.

Some time after 15 December 1971, troops killed Nyamphunga Chaleke (aged 60), wife of Gervásio Kairiga, at Chirodzi. She was killed as a reprisal because her husband had escaped from Estima where he was a prisoner.

On 19 December 1971, Commandos killed three persons at Chacolo: Laeni Tikha (married), Saeni Alfai (married) and Maki Godo (married).

On 10 February 1972, at Inhaticoma, troops shot and killed Kedeka Laisse, who was looking for her children hiding in the brush because they were afraid of the soldiers.

On 6 March 1972, Commandos killed two persons at Inhantondo: Gedece Telha and her unborn child which she had carried almost to term.

/...

On 16 March 1972, troops beat to death an old man, aged 70, at António (Mucumbura).

On 18 March 1972, troops shot and killed at the village of António: António Chinaca (aged 58) and Saeni (aged 71). They were killed as they were opening the cattle-shed door.

On 20 March 1972, the Mucumbura DGS (PIDE) tortured to death Mr. Macaza (aged 68) of the village of António.

On 20 March 1972, troops beat to death a couple from the village of Chimandabue, subsequently burning the bodies.

B. TREATMENT OF POLITICAL PRISONERS AND CAPTURED
FREEDOM-FIGHTERS

1. Reference to some relevant laws

356. The legislation on the subject, including the decree-laws, concerning the old security or secret police, Policia Internacional e de Defesa do Estado (PIDE), as well as the laws providing for its abolition and replacement by a Directorate General of Security (DGS), is comprehensively dealt with in document E/CN.4/AC.22/14 and in the previous reports of the Ad Hoc Working Group of Experts (E/CN.4/1020/Add.1, chap. XXII and E/CN.4/1050, chap. V (B)).

357. A new law (Decree No. 239/72 of 18 July 1972) regulates the application of security measures, or the holding of prisoners without trial, in connexion with acts against the territorial integrity of the State. 6/ The text of the law is as follows:

"Considering that the current situation in the Overseas Provinces does not permit the immediate abolition of the juridical régime of administrative security measures;

"Considering, however, the desirability of revising the system at present in force in the Overseas Provinces, limiting the scope of action by the Government and restricting the application of such measures to cases of danger arising from the commission of acts prejudicial to the territorial integrity of the nation; and

"Having regard to the provisions of article 109, paragraph 6, of the Constitution and the resolution of the National Assembly published in the Diário do Governo on 27 December 1971;

"As a matter of urgency, and as authorized by article 136, paragraph 3, of the Constitution

"In the exercise of the powers conferred by article 136, paragraph 1, of the Constitution and in accordance with paragraph 2 of that article, the Government decrees and I do hereby promulgate the following, in order that it may have the force of law in the Overseas Provinces:

6/ According to reports published in "Noticias e Fatos" No. 218 of 17 November 1972, a newsletter issued by the Casa de Portugal, New York, and The New York Times of 3 December 1972, a decree of the Ministry of Interior, dated 16 November 1972, abolished the provisions allowing the detention of political prisoners for a period of six months to three years as a security measure in accordance with Decree-Law No. 40,550 of 12 March 1956. The text of the new decree is not yet available; however, it is said to contain provisions including in the Portuguese Penal Code as criminal offences punishable by prison terms of six months to three years offences such as forming, belonging to or subsidizing a group that subverts the social order or acts against state security. The same reports indicate that as a result of these developments 13 political prisoners were freed late in November

"Article 1.

1. Administrative security measures shall be applicable only to persons who commit or collaborate in the commission of acts prejudicial to the territorial integrity of the nation, and may consist of:

- (a) Internment in an agricultural colony; and
- (b) Residence in a specified locality.

2. The term of an administrative security measure shall not exceed three years and may be extended for another three years if the circumstances which necessitated the application of the measure still exist; such measures shall not be applied concurrently with any penalty involving deprivation of liberty or security measure of a judicial nature.

"Article 2.

The measure provided for in article 1-1 (a) shall be applied only when the circumstances, having been investigated, indicate that it is the most appropriate measure in the case in question.

"Article 3.

1. Administrative security measures shall be imposed by a ruling accompanied by a statement of the reasons on which they are based and specifying which measure is to be applied and the term of its application, handed down in proceedings organized by the General Directorate of Security when the commission of acts as referred to in article 1, or collaboration in the commission of such acts, has been proved.

2. Such measures may be executed in the province where the person to whom it applies is, in another province or in metropolitan Portugal.

3. If at any time it is determined that it would be desirable to terminate the execution of the measure, the General Directorate of Security may reopen the proceedings and propose that the measure should cease to be applied.

"Article 4.

1. Administrative security measures entailing internment or residence outside the province shall fall within the competence of the Minister of Overseas Provinces, to whom the case shall be referred for execution when the province deems it appropriate to propose that the person in question should be removed from the province.

2. Measures not entailing removal from the province shall be imposed by the Governor." 7/

2. Analysis of evidence

358 The Secretary-General of Amnesty International, Mr. Martin Ennals, testified that his organization had very little information on the situation of people who had been captured in the African Territories under Portuguese administration. In some cases, persons belonging to liberation movements, if they were captured, were sent to Portugal to face trial or might be sent to one of the off-shore islands of Angola such as Cape Verde. They might be kept in a variety of rather sinister prison circumstances, about which it was extremely difficult to obtain information.

359 In the view of Mr. Ennals, there was much to be said for asking that the Geneva Conventions of 1949 which relate to prisoners of war should in fact be applied to the treatment of freedom-fighters. At a time when the International Committee of the Red Cross and the United Nations were endeavouring to revise the provisions relating to the treatment of prisoners taken in periods not only of war but also of armed conflict, he believed that it was very important, in the interest of the freedom-fighters themselves, that Portugal be forced to recognize that prisoner-of-war treatment applies (RT.130, p. 67).

360 Written evidence submitted by the Movimento Popular de Libertação de Angola (MPLA) contains the observations and conclusions of a Belgian lawyer, Me. Marie-Thérèse Cuvelliez, observer of the Belgium Human Rights League, who attended the first part of the Lisbon trial of Angolan priest Pinto de Andrade and other persons detained in Portugal in connexion with the liberation movement of the African Territories under Portuguese administration. The text of the lawyer's report is as follows:

"DETENTION PENDING TRIAL

"It is already clear that use is still being made of the regulatory provisions described by Me. Berenboom, observer for the League at the trial of certain members of MOD. Persons who are arrested remain in the hands of the police for a period of three months, without any action by the judiciary. This period of three months may be extended for two periods of 45 days on the same conditions. In theory, at the end of these six months a person should either be released or be brought before the competent court. The 10 prisoners in the case in question have been detained without trial for more than that period.

"Portuguese law provides for a rather complicated habeas corpus procedure, but a counsel invoking it runs a great risk because, if the jurisdiction before which it is invoked considers that there are no grounds for the habeas corpus application, he is liable to imprisonment or fines.

"For those detained in the de Andrade case, detention without trial stricto sensu has been extended as follows:

/...

"Alvaro José de Melo Sequeira Santos, from 5 January 1970; Raúl Jorge Lopes Feio, from 27 January 1970; José Coelho da Cruz, from 27 January 1970; Maria José Pinto Coelho da Silva, from 27 January 1970; Diana Marina Dias Andriga, from 27 January 1970; António Manuel Garcia Neto, from 2 February 1970; Rui Filipe de Matos F. Martins Ramos, from 14 November 1969; António José Ferreira Neto, from October 1969; Fernando Emílio de Campos F. Sabrosa, from 29 February 1970; Joaquim de Rocha Pinto de Andrade, from 7 April 1970.

"In theory, under the regulations, a person who is arrested should be able to contact his lawyer immediately. In practice, this is not so.

"In the de Andrade case," continues Me. Cuvelliez, "I was able to collect information on:

"DIANA MARINA DIAS ANDRINGA: this young white woman journalist, a native of Luanda, a member of the Portuguese bourgeois business class, was known in Lisbon for her leftist views. Her husband was in prison. She had taken the precaution of retaining counsel (who was also counsel for her husband). She was arrested on 27 January 1970. Her counsel, armed with the valuable document which showed that he had been retained, tried in vain to visit her immediately. It was not until 22 or 23 April 1970 that he could see her for the first time, at the Caxias prison, where he was able to talk to her alone. However, there is a partition between the lawyer and his client, and they have to speak very loudly to make themselves understood. Correspondence between lawyer and client is opened. Sometimes it is seized and held in police files. The lawyer must ask permission to see his client each time, stating the hour and the date.

"The offences charged against the accused include two articles which were rejected by the censor and were not published. The young woman is accused of having supported MPR. She herself has declared her solidarity with the people of Angola but not with MPLA.

"JOAQUIM PINTO DE ANDRADE: has been able to see his counsel freely. The lawyer has conferred with him as often as he wished and this has enabled him to prepare his defence in detail. The defence is based on the fact that this black priest has been subjected to racism and to 10 years of persecution. This is the first time that Father de Andrade has been brought to trial.

"TORTURE

"Apart from Joaquim Pinto de Andrade," the report notes, "all the accused complain of having been subjected to physical torture, the most common form of which seems to be the 'sleep' torture, which consists of depriving the detainee of sleep by all kinds of means (including drugs). For instance, I heard Mrs. Diana Andringa tell the court that she had been subjected to sleep torture for six days and six nights. For a 'connoisseur' - in this case a woman who had been under arrest some years previously for 17 to 18 months and had been subjected to the same treatment - that seemed very harsh.

"It is rather remarkable, and also distressing in view of our notion of torture, that Portuguese questioned on this subject appear to regard sleep torture as a mild measure, to the point that they tend to forget it and not to refer to it when they are questioned concerning torture generally. It is only when the questioner probes more deeply that they mention it.

"Threats are noted here for the record - threats of internment in 'camps'.

"Women are interrogated in the daytime by men and at night by women (as a matter of propriety), and the interrogators work in four-hour shifts.

"...

"CONCLUSIONS

"The proceedings brought against the accused 'MPLA militants' are, as I was able to judge from the written charges, from the conduct of the hearing and from the facts adduced by the defence, a farcical and distressing sham and a travesty of justice for various reasons, including:

The absence of the judiciary during the preliminary examination;

The length of time for which the accused were in the hands of the police;

The use of torture;

The conditions of imprisonment;

The lack of any serious judicial inquiry at the hearing;

The lack of any real publicity at the hearing;

Impediments to the defence of the accused.

"During these proceedings, patent violations of human rights occurred. 8/

"..."

(a) Evidence relating to events in Angola

361. Mr. Pascal Luvualu stated that Angola had become a vast prison, citing many concentration camps as examples, such as Bié, Péu-Péu (Huila), São Nicolau and Baía dos Tigres (Moçamedes), Forte Rocaes (Kuenes), Menonge (Kwando-Kubango), where the methods were said to remind everyone of the blackest times of nazism. The witness said that those who managed to flee told frightening stories of summary executions (RT.139, pp. 2-11).

8/ "MPLA - Rapport à l'intention du groupe ad hoc d'experts de la commission de l'ONU des droits de l'homme," annex IV, Lusaka, August 1972, citing a report in La Cité, Belgique, 19 February 1971.

362. According to Mr. Mario de Andrade, there are three categories of political prisoners which determine, so to speak, the impact of opinion on the conditions under which these prisoners are detained. Some prisoners are confined in the S. Nicolau concentration camp in a very remote area of Angola itself. Other Angolan political prisoners are equally isolated in Tarrafal Prison on one of the islands of Cape Verde. Finally, others are imprisoned in Portugal and, under Portuguese legislation, are said to have the possibility of defence and even of judgement. Mr. Andrade stated that information on political prisoners depended on the personality of the detainee. An ordinary indigenous rank and file worker was the worst victim. However, certain Angolans imprisoned in Tarrafal, such as the writer Luandino Vieira, the poets Antonio Jacinto and Antonio Cardoso and the freedom-fighter Armino Fortes were able to arouse more concern. Those detained in the Peniche Fort, in Portugal, among whom the witness mentioned his brother, Father Pinto de Andrade, were said to have been able to confront the Portuguese authorities during the trial of the 10 Angolan nationalists. Mr. Andrade stated further that he had precise reports concerning discrimination among prisoners in Tarrafal, even concerning matters of food and health, adding that Cardoso, one of the detainees there, had gone crazy (RT.141, pp. 51-53).

363. Mr. de Andrade and Mr. J. J. Caetano submitted to the Working Group written evidence containing information on the way the São Nicolau concentration camp is divided, as well as the names of several Angolan political prisoners detained there, in Fort Peniche (Portugal) and in Tarrafal Prison, as follows :

"SOME ANGOLANS IMPRISONED IN THE
SÃO NICOLAO CONCENTRATION CAMP

THE SÃO NICOLAO CONCENTRATION CAMP IS SITUATED IN THE MOÇAMEDES DESERT AND IS DIVIDED INTO THREE PARTS, EACH OF WHICH IN TURN IS CALLED A CAMP. LIVING CONDITIONS ARE LEAST BAD IN CAMP NO. 1; IN CAMP NO. 2 THEY ARE MEDIOCRE AND IN CAMP NO. 3 THEY ARE VERY BAD.

It has very recently been possible to discover a few of the names of prisoners who were deported in 1971 and 1969 to join the almost 4,000 deportees at São Nicolao. The names are as follows:

1. JOSÉ JACINTO SILVA VAN-DUNEN - Born in 1940; completed secondary school; militia cavalry sergeant; arrested in 1971 and deported in 1971.
2. LUIZ EDGAR CEITA - Born in 1947; completed secondary school; topographer; former sergeant in the Portuguese army; arrested and deported in 1971.
3. CARLOS JORGE - Born in 1949; secondary studies not completed; militia sergeant; arrested and deported in 1971.
4. JOSÉ VIEIRA RODRIGUES MINGAS - Born in 1944; health services official; arrested and deported in 1971.

/...

5. JOÃO BONECO - Completed secondary studies; arrested and deported in 1971.
6. MOISÉS CAMBAIA - University student and public official; arrested and deported in 1971.
7. CARLOS MANUEL MESQUITA OCTÁVIO - Arrested on 4 January 1970; released at the beginning of April; rearrested in January 1971 and deported in April 1971.
8. JOÃO CAHEIRO - Student, aged 18; arrested in 1970, deported in 1971.
9. JOÃO MATIAS - Aged 19; five years of secondary school; arrested and deported in 1970.
10. MANUEL VAN-DUNEN - Air force corporal; arrested in February 1972.
11. MÁRIO GRINGO - Arrested and deported in 1969.
12. RÓMULO - Arrested twice; now at São Nicolao.
13. ANTONIO LOTTY - Arrested twice; now at São Nicolao.
14. VELENTIM - Engineering student; arrested in 1969; deported to TARRAFAL (Cape Verde archipelago) on 29 March 1970; transferred to São Nicolao at the end of 1971.

THREATENED WITH DEPORTATION TO SÃO NICOLAO

1. and 2. GUIMARÃES and MAJOR NETO - Failed in an attempt to hijack an aircraft; arrested in 1971.
3. AUGUSTO SILVA - Official of DTA (Department of Air Transport); arrested for the third time in January 1972.

ANGOLANS DETAINED IN PORTUGAL (PENICHE FORT)

Five of the accused in the 'CASE OF THE TEN' have finished their time in prison and have been released. The following are still in prison:

1. ALVARO JOSE DE MELO SEQUEIRA SANTOS
2. ANTONIO MANUEL GARCIA NETO
3. RUI DE MATOS F. MARTINS RAMOS
4. ANTONIO JOSE FERREIRA NETO
5. JOAQUIM DA ROCHA PINTO DE ANDRADE

In the judgement, each patriot was sentenced to a fine of 20 escudos per day (17,500 escudos).

ANGOLANS DETAINED AT TARRAFAL (CAPE VERDE ARCHIPELAGO)

The precise number of the group who have been detained longest is not known. They include:

1. JOSE VIEIRA MATEUS DA GRAÇA (the very well-known writer LUANDINO VIEIRA), who is due to finish his sentence in 1974.
2. ANTONIO JACINTO, the very well-known poet.
3. ARMINDO FORTES, sentenced to 25 years in prison.
4. ANTONIO CARDOSA.

Another group was arrested at Luanda on the day before the elections for deputies to the Portuguese Assembly, 25 October 1969, on charges of having intended to set off bombs; a third group was arrested in November of the same year and charged with taking part in one of the hijackings of aircraft to Pointe Noire (People's Republic of the Congo). Under threat of execution, they were forced to sign a 'confession', according to which they intended to kill Marcello Caetano.

The names of some of them are:

5. ALBERTO CORREIA NETO.- Arrested on 4 January 1969; aged 20; medical student.
6. ALCINO BORGES DE CARVALHO - Aged 19; arrested on 4 January 1969; medical student.
7. ALDEMIRO VAZ DA CONCEIÇÃO - Aged 20; technical high school; a soldier at the military training school; arrested on 12 December 1969.
8. ANDRE MATEUS NETO - Aged 43; joiner; a former MPLA militant.
9. ANTONIO GONÇALVES CAPITA - Aged 25; worker.
10. AUGUSTO KIALA BENJE - Aged 30; a DIAMANG worker, a participant in the events of 4 February 1961, who had already endured six years' imprisonment at Luanda.
11. BERNARDO LOPES TEIXEIRA - Aged 20; an official of the Settlement Department.
12. EDUARDO SANTANA VALENTIM - Aged 25; engineering student now transferred to the São Nicolao camp.
13. FRANCISCO CAETANO - Aged 23; a painter from the island of Luanda.

/...

14. GILBERTO SARAIVA DE CARVALHO - Aged 29; former second lieutenant (prisoner of war).
15. JAIME GASPAR COHEN - Aged 21; student; arrested on 12 December 1969.
16. JUSTINO PINTO DE ANDRADE - Aged 23; medical student.
17. PAIVA DOMINGOS DA SILVA - Aged 40; a participant in the events of 4 February; nine years in various concentration camps; had been released from São Nicolao and was rearrested after three months.
18. TITO ARMANDO DOS SANTOS - Aged 36; tailor.
19. VICENTE PINTO DE ANDRADE - Aged 20; commercial high school student.

Another 23 Angolan patriots not identified..."

(See also RT.141, pp. 51, 52 and 53.)

364. Mr. Makina Mwonyo testified that following the capture of several freedom-fighters in their own camp at Muye, in the district of Moxico, in March 1972, where four of his relatives had been killed by the Portuguese forces, 9/ his grandmother and other Angolans were kept in the Muye Prison. She managed to escape and is said to have informed the witness that the political prisoners were badly tortured in that prison, where they allegedly were forced to drink urine and to eat "rubbish things". He stated further that another uncle of his, a younger brother of the one killed by Portuguese soldiers at Muye, had his ears cut off by the soldiers and was forced to dig graves for some other people who had been killed. Reportedly, the reason they cut off his ears was that he could not hear properly, since he was half deaf, and therefore could not understand when the soldiers called him.

365. Witness Mwonyo testified also that before he left for Zambia to appear before the Ad Hoc Working Group of Experts in July 1972, the Portuguese forces came to his village to attack the villagers. When the people were running away, a little girl about two years old, named Kabuyi, was captured by Portuguese soldiers who allegedly took a sharpened stick and stuck it half way through her throat, and left it there (RT.139, pp. 52-65).

366. Mr. Nsamba, former soldier of the special branch of the Portuguese army, testified that after witnessing the killing of four chiefs in the strategic village of Kameya 10/ and his subsequent escape from that village, he was imprisoned again by the Portuguese. He stated that while in prison he and other political prisoners were forced to drink urine and to wash the gaol warders' buttocks with their hands. The witness pointed out scars on his hands and forehead which, he said, were caused by lighted cigarettes applied to them by the prison guards. In February 1972

9/ See para. 330 above.

10/ See para. 332 above.

Mr. Nsamba managed to escape a second time and joined the freedom-fighters (RT.139, pp. 81-85 and 92).

367 Mr. Muila Mavungo testified that he was arrested by the secret police (PIDE) at Buco-Zau, Angola, in September 1963, on suspicion of supporting the liberation movement, and was interrogated and beaten violently every day until he was badly wounded, with three broken teeth. He was later transferred to a concentration camp at Menongue, Cuando-Cubango district, near the Missombu River where prisoners were placed on wooden planks, shot and caused to fall into the river to die. The witness stated that after two years in Menongue he was transferred to São Nicolau Prison, district of Moçamedes, where he worked with 4,000 other prisoners splitting rocks to build houses. When he arrived at São Nicolau in 1965 there were only two houses; when he left in 1971 it was practically a town. Reportedly, the prisoners were said to have lived there with their wives and children in small huts for five or six persons, the women in separate huts, and to have worked side by side doing the same hard work in the fields and the salt mines. The witness stated further that the prisoners were given rotten food and little water, since getting water necessitated going about four kilometres. According to Mr. Mavungo, an administrator at São Nicolau named Lima once punished a prisoner with 500 strokes of the rod and since the prisoner was not taken care of immediately, he died in the prison. Reportedly, there were seven or eight deaths a day in the prison as a result of disease or severe beatings by the guards. The witness stated further that during his stay in prison, in June 1967, he believed, a group of foreigners, including a representative of the Red Cross, 11/ an American minister and some French persons, visited São Nicolau and were said to have been astonished by the living conditions there, having seen prisoners walking around practically nude in quite cold weather. Following that visit the clothing situation changed for the prisoners. Mr. Mavungo stated that after having been imprisoned for 11 years, without trial, he was released in 1971 (RT.140, pp. 26-50).

368 Mr. Tomas Manuel testified that he had been arrested in 1966 and put in gaol in Caxito, district of Luanda, where he was crammed with 20 other political prisoners into a small cell, which alone served to accommodate their physical needs. The witness said that the prisoners were hungry because there was no food and that they were beaten all the time; that the guards took away his clothes and that as a result he had to sleep on the floor, naked. Reportedly, he was able to escape by bribing a prison guard with 100 escudos (RT.140, pp. 64-66).

11/ The 1966 annual report of the International Committee of the Red Cross, p. 5, contains information concerning the visit of its representative, Mr. Hoffmann, to Angola on 22 June. The report states that in the course of his mission, Mr. Hoffmann inspected a prison camp in the Cuando-Cubango district some 15 miles from Serpa Pinto, the "Campo de Trabalho de Missombo", a detention centre in the Moçamedes district, and the "Campo de Recuperação Social de São Nicolau", adding that in all places visited, the delegate was given a free hand to inquire into detention conditions. The 1970 annual report, p. 14, states that Mr. Hoffmann went to Luanda to introduce to the Portuguese authorities the delegate and doctor-delegate who, from 1 to 17 November, visited two prisons, a military hospital and a "rehabilitation camp", where they saw nearly 1,340 political detainees. Reports on the visits are said to have been sent by the ICRC to the detaining authorities.

369. According to Mr. Lubaki, Portuguese operational units subject the freedom-fighters they capture to the cruelest of tortures during interrogations, and kill them thereafter. Reportedly, the captured Angolans are forced, before being killed, to serve as guides or scouts in the bush in order to help find guerrilla camps 12/ (RT.142, pp. 12-15 and 28).

370. Mr. Jose Adao Gomes testified that he had been captured by 22 Portuguese soldiers at Kizele, Angola, on 22 April 1970, while in uniform and armed as a member of the nationalist movement. After being put in gaol, beaten and interrogated many times, he was brought before an officer in the Portuguese army post of Santa Eulalia where he was questioned and beaten again as a terrorist. The witness stated that he was tied up with a rope, had a rucksack with canned food put on his back and was made to board a helicopter. When the helicopter was about 15 metres high a second lieutenant allegedly threw him into the bush. He started to feel sick, he said, his mouth, nose and eyes bleeding. The helicopter came back, and when the Portuguese noticed that he had not died, they reportedly dragged him by the rope for about 10 metres, causing more injury, and then took him back to gaol where he lost consciousness. After receiving two injections he became conscious and was left in prison for five months. Then, he said, he was taken to a senzala, or strategic village, 13/ where he said he had to work seven days a week from 6 a.m. to 7 p.m., without pay, until he managed to escape with 23 other people in April 1971. The witness, who appeared before the Working Group limping and using a walking-stick, stated that his spinal column and other bones had been dislocated as a result of having been thrown from the helicopter and that his penis had been damaged and a plastic tube introduced so that he could urinate (RT.142, pp. 51-85).

371. Mr. Manuel Miranda, a soldier in the Angolan nationalist movement, testified that he had been captured with two other comrades on 25 October 1971, close to the Lué River. He stated that his companions had been killed by the Portuguese forces, while he had been beaten and imprisoned at the Nambugangongo Post. The witness stated that he was later taken to the bush, accompanied by Portuguese soldiers, and made to walk all night, always tied up, when they fell into an ambush by ALNA forces, causing two deaths among the Portuguese. As a result, the battalion commander gave instructions that the witness be deprived of food and be constantly beaten, since he had been sent out to guide the Portuguese soldiers to the nationalist positions but had instead let the soldiers fall into ambush. The witness stated that he was transferred to another prison, where he met six comrades captured previously who had been wounded and injured by the torture they had undergone; these freedom-fighters disappeared one by one. On 3 January 1972 the witness was called before a major who reportedly told him that the Portuguese had spared his life during the ambush so that he could guide their forces through the area where he had been captured. He was forced to serve as a scout again and was tied up with the exception of one free hand in which he wielded a machete to clear the way through the bush. After walking for about 23 kilometres, however, the corporal who was with him released the end of the rope which still bound him for just long enough to allow the witness to run away. Afterward, he stated, he rejoined the maquis (RT.143, pp. 3, 4-5, 6).

12/ See also para. 340 above

13/ See also para. 401 below.

372. Mr. Antonio Martins reported on the bombardment of hospitals and schools in the Angolan hinterland, 14/ in which a pupil of his named Domingo Rodrigues Miguel, aged 14, was captured alive by the Portuguese forces at the Sao Fernandes school on 7 March 1972. Allegedly, they took him 25 kilometres away, cut off his right arm and his left ear with a machete and released him. The boy is said to have returned home carrying the dismembered parts with him and four months later, after having received treatment in a hospital, to have joined the nationalist movement (RT.143, pp. 11-17).

373. Mr. Pedro Vida Garcia stated that throughout the Angolan territory and essentially in the areas close to the regions affected by the liberation war, the Portuguese forces frequently organized raids in order to uncover persons co-operating with the guerrillas. During their raids they arrested people arbitrarily and in large numbers, subjecting them to torture and subsequent murder. Several such raids occurred in 1971 at Kinkunzu, Mussela and Catalambanza 15/ (RT.143, pp. 39-46).

374. Mr. François Lele, President of the Nto-Bako Party, testified that there were more than 40,000 prisoners living in inhuman and degrading conditions in Angola, deprived of everything in a place where disease was rampant. He stated that prisoners Andres Mazoa and Paul Kralu, while being transferred from the prison at Sao Paulo, were forced, under penalty of lashes on the back, to walk all the way to the Atlantic coast, 35 kilometres from the capital, with loads of sand on their heads. The witness provided the names of the following prisons in the Luanda area: San Pedro de Boiro, eight kilometres from Luanda; one civil prison; the PIDE prison; the common law prison, Sao Paulo; the concentration camps of Damba, Bay of Tigers, Moçamedes - 160 kilometres from Luanda - and Serpa Pinto (RT.146, pp. 12 and 13-15). The witness listed the following persons as being at present in prison at Luanda:

"Alberto de Cruz (at present at Carmona)
 Samuel Teixeira, the same;
 Samuel Cesar, the same;
 Paul Muila, who is at Sanza Pombo;
 Simon Kiala (Kimbele);
 Samuel Kosi (Macocola);
 François Suamono (Buenga);
 Simon Bambili (Bcu);
 Paul Kiala (Bcu);
 Elias Morais (Macocola);
 Kosi Farao (Damba);
 Manuel Lelo (Damba);
 Pedro Panda (Damba);
 Joao Miezi (Damba);
 Fernando Pinto (Purim);

14/ See paragraph 414 below.

15/ See details in paragraph 337 above.

Joao Pedro Mbola (Maquela);
Joao Purgante (Macocola);
José Manuel (Bengo);
Tomaz Antonio (Sanza Pombo);
Antonio Coelho (Sanza Pombo);
Moises Mateus (Sanza Pombo);
Daniel Kanza (Sanza Pombo);
Mafuani Makundi (Massau);
Joao Laurengo (Sanza Pombo);
Caetano Laurengo (Sanza Pombo);
Pedro Mbanza (Sanza Pombo);
Joao Marcos Pedro (Sanza Pombo);
Fonceira Muanza (Macocola);
Mateus Zulumongo Sok (Sanza Pombo);
Paulo Alberto Cataquisto (Sanza Pombo);
Guilhermo (Sanza Pombo);
Pedro (Sanza Pombo);
Rigiador Kimoyoyo (Macocola);
Joaquim Pires (Macocola);
Marcos Nzumbo (Macocola);
Francisco Maluta (Macocola);
Antonio Maiala (Macocola);
Andreade Marindo (Macocola);
Raul Buala (Macocola).

In 1970, Francisco Kadiemba and the Cato brothers were arrested and sent to the Island of Sao Nicolao in the province of Maçamedes. In that same year the Portuguese arrested the following tribal leaders:

Chief Mpambu of the Sanza Pombo region;
Chief Ngonga of the Mukaba region;
Chief Ngonga Nzau of the Kwilu Pombo region;
Chief Kongo of the Carmona region.

These four revolutionary chiefs were transferred blindfolded to the prison on the Island of Sao Nicolao (RT.146, pages 16 and 17).

375. According to Mr. Lele, members of his party in prison suffered from such diseases as bronchitis, malaria, and so forth. Reportedly, they were tied with electric wire and forced to eat rotten fish and beans; they were compelled to eat earth while being whipped; and dogs were set upon them. Mr. Lele stated that the Secretary-General of his party, Mr. Alberto da Cruz, was assassinated by the Portuguese at Ucuá, near Luanda (RT.146, p. 17).

(b) Evidence relating to events in Mozambique

376. Mr. Joaquim Chissano testified that the repressive measures used by the Portuguese against black Africans, especially after the launching of the armed struggle for national liberation, had considerably worsened over the past two years,

reaching unimaginable extremes (RT.135, pp. 8-10). The witness cited a South African paper, The Star, as having reported in its issue of 6 November 1971 that in the Tete district Portuguese soldiers had forced mothers to crush their children in mortars and had ordered civilians to leave their villages. The following day, it reported, while on their way to another place, the villagers were attacked from helicopters and savagely massacred (RT.135, p. 17).

377 According to Mr. Chissano, those who protested against such acts by the Portuguese army in Mozambique were thrown into prison, as reportedly happened to four priests - two Portuguese, Fathers Sampaio and Mello, and two Spaniards said to have been arrested in Rhodesia by the police of that country and transferred to Mozambique. These four Catholic priests were awaiting trial before a Portuguese military court for having denounced from their pulpits the Portuguese massacre of civilians at Mukumbura in April 1972. All four priests had been kept incommunicado since their arrest and had been denied legal assistance.

378 Mr. Chissano stated that none of the atrocities committed by the Portuguese army had ever given rise to an inquiry or a trial, which proved that far from being isolated acts, they constituted a deliberate practice. Justification for these acts, in his view, was to be found in the writings of the Commander-in-Chief of the Portuguese army in Mozambique, General Kaulza de Arriaga, whose "Lessons of Strategy" from the High Command courses, 1966-1967, vol. XII, stated:

"... The Portuguese strategy in Africa should be aimed at the realization of an equilibrium between the black and white population" (RT.135, pp. 16, 17, 23).

The witness maintained further that within that perspective General Kaulza de Arriaga, after having hailed "the exportation of African slaves to Brazil as a good thing", proposed the present aims of the Portuguese action as follows:

"... On the one hand the growth of the white population; on the other, the limitation of the black population" (RT.135, pp. 16, 17, 23).

379 Mr. José Ngolombe testified that he was arrested at Beira on 9 May 1964 by agents of PIDE. He had been sent to a prison in Lourenço Marques, where the police began to hit him with irons and to use a club or palmatoria ^{16/} on him in order to extract information about FRELIMO. The witness said that he was never tried but was sent to Machava Prison where he stayed until July 1965, packed like sardines in a cell with the other prisoners. They were given no water, were beaten, and were forced to observe their fellow prisoners being subjected to atrocities and subsequent murder. He was transferred to Malaban Prison ^{17/} in July 1965 and afterward was transferred back and forth from Malaban Prison to Machava Prison, every year or so, until his release on 9 February 1971.

^{16/} See paragraph 347 and foot-note 3 above.

^{17/} See E/CN.4/1050, paragraph 468, where Malaban is described as the largest concentration camp, with 20,000 prisoners.

380. Mr. Ngolambe stated that at Machava Prison, said to be the central prison, there were 3,000 prisoners. ^{18/} The food served there consisted of bones boiled in water. The best part of the soup, with all the fat, was given to the common prisoners; the rest was given to the political prisoners, who developed stomach trouble and internal hemorrhages as a result of their diet. When he was at Machava in October 1967, the 80 political prisoners in his group were quite naked, except for some sack cloth from flour sacks. Whoever protested that the sack cloth had holes in it was beaten and sent out naked to work on the plantation.

381. Mr. Ngolombe testified further that when he arrived in Machava in January 1971 he was placed in the new block of the prison with a group of 30 prisoners. They were told that whoever continued to speak about FRELIMO would never leave the prison. The same 30 people refused to obey orders and as a result were put in solitary confinement in the new block without clothing, during the cold season. Water was thrown on the floor when the prisoners had to come in and sleep, and no food was provided. According to the witness, of the 30 people who went into that new block, only seven survived. All the others died right there, owing to bad nourishment and severe punishment. Among those who died were Salimo, Joel, Joao Chitete, Alexandro Mixicoma and Juma. Some comrades he knew remained at Machava: he saw them being transferred from block 8 to block 9. But others he never saw again. The witness claimed to have seen 50 persons die, in consequence of the beatings and cruel treatment received, during the seven years he spent in prison. He said that he himself had undergone severe beatings, as proved by a tooth lost in prison while being subjected to such brutalities.

382. Mr. Ngombole testified that during his stay at Malaban Prison two representatives of the Red Cross visited the prison, first Mr. George Hoffmann, in June 1966, and then a man named André, in 1968, both of whom had an opportunity to see the political prisoners naked or covered with sack cloth, as well as the kind of food they were given. The witness stated that Red Cross representatives never went to Machava Prison because the Portuguese authorities kept there the persons whom they showed to no one, and who had always been locked up. The witness believed that he was released from prison as a result of the Red Cross visits, because the Portuguese were ashamed before the visitors (RT.135, pp. 58-95).

383. Mr. Silvestre Mueda testified that he was captured by Portuguese forces after having been shot in one foot while fleeing Muidumbe Valley with his family. He said that he was locked up in a prison cell, where the prisoners had to satisfy all their needs, since no one was allowed to go out. Later, he was taken out of prison for awhile and taken to the strategic village of Chai, surrounded by barbed wire, where he was hit with a palmatoria for resisting the demands of auxiliary soldiers that he carry weapons and go into the bush to fight on their side. In the strategic village he was forced to work in the fields to get money to pay taxes, always under the surveillance of auxiliary soldiers. When one or more persons wanted to take care of their needs they had to show their identification cards to be let out through the gate, and they had to remain close to the gate, sometimes men and women together, where the soldiers could see them. The witness stated that he was imprisoned again in Mueda prison for a few months and then transferred to Macomia prison where he was

^{18/} See E/CN.4/1050, para. 474.

kept for one year, without trial. He said that the prisoners had no clothes and that in prison he slept on the floor, with sack cloth for a blanket (RT.136, pp. 17-20, 21, 22-25, 26, 27, 31, 32, 33-35, 36, 37-40).

384. According to evidence given by Mr. Ernesto Erbert Njolomola he was imprisoned with his parents in the village of Chimpene in July 1970, on suspicion of concealing FRELIMO guerrillas. 19/ They were allegedly beaten with a whip and with a palmatoria, kept in chains, and given only grain salt to eat, three times a day, for two weeks. The witness stated that he had stomach aches and pains all over in consequence of the diet and the brutal treatment received in prison (RT.136, pp. 46, 51, 52, 61).

385. According to written evidence submitted by Father Luis Afonso da Costa, a Combonien missionary expelled from Mozambique in 1972, current facts confirmed that torture against political prisoners was practised in several regions of Mozambique. He cited various cases, such as that of Xavier Tomas, assistant teacher at one of the Catholic Missions, said to have been beaten severely on three occasions until he dropped in a coma; Manuel Chawanda, hospitalized with a broken arm at Tete in consequence of whippings; Gouveia Chaola, 70 years old, who developed gangrene in the palms of his hands as a result of beatings; M. Macaza, 68 years old, said to have been beaten to death by the secret police (DGS) on 20 March 1972. Father da Costa proceeds as follows: 20/

"In the meantime, let us hear what Auguste Luís, who was imprisoned at Estima, has to tell us. He will say something of what he saw and suffered himself. Among other things:

- They would force the third phalanx of the victim's finger against the second phalanx and then tie it in that position with a piece of plastic cord (mika). This was done to all the fingers in sequence.

- They would force prisoners to sleep tied together by the hands and feet.

- They would tie a rope around the victim's neck, pass it over a beam and pull on it slowly. When the torturer saw that the victim was about to choke, he would let him sit on a rod for awhile. Many became unconscious, others ...

- They would tie the prisoner to a rod by his outstretched arms and then attach a rope to each foot. The ropes were passed over a beam and they would then hoist the victim by the feet, keeping his legs apart, so that they could whip and beat him as they liked.

- They would beat people until they drew blood."

19/ See also paragraphs 347 and 348 for details.

20/ See "Encore une année d'agonie...Sans espoir de resurrection", op. cit., p. 5.

386. In written testimony, Joao Carlos Antonio Nhamizinga states that on 16 January 1972, a Sunday, at about 6 p.m., he was waiting with some friends at a bus stop known by the name of "Bar Paraíso" in the Manga area. Some soldiers arrived and demanded the identification documents of the passengers while at the same time insulting them. The soldiers proceeded to throw the documents on the floor and when the people protested, they took off their belts and struck the people. The witness said that one of his arms was broken and that one of his friends, Bauchande, had his head broken. On the same day, the soldiers killed two persons in the Manga area by striking them with their belts. He did not know the names of the victims but he saw the bodies. The soldiers had no respect for women, the witness asserted. They tried to rape them and hit them, as well as their families, when the women dared to defend themselves. During the Easter holidays in 1971, he said, in the village of Massanga, some soldiers arrived in a jeep and tried to rape his cousin, but she managed to escape.

387. The witness stated further that the Portuguese wanted to force everybody to "become assimilated". They sent lists to all the companies with the names of those who must become "assimilated" and, reportedly, those who refused were fired and had a note written in red on their identification papers. The police arrested all those with the red note, claiming that they are "terrorists". The witness said that he was forced to assume the status of "assimilated" in the CELMOQUE, the company where he worked, and that the list arrived there in February 1972. This "assimilation" campaign he stated was also a form of forcing people to enrol in the army, for once "assimilated", one was forced to do military service. Two people he knew were arrested by the PIDE-DGS for having listened to Radio FRELIMO. Their names were Jose Nacete and Joaquim Luis. They were arrested in November 1971 in their homes in the area of Vaz, Nova Chipangara, and stayed in the PIDE prison for six months. The witness also stated that in the prison of PIDE, in the area of Ponta Gea, in Beira, the Portuguese tortured and killed people. Reportedly, one of the ways used to kill people consisted of locking prisoners in a cell in a cave. During the high tide, the sea-water flooded the cave and the people drowned.

388. Written testimony, submitted to the Working Group in Dar es Salaam on 11 August 1972 by Mr. Alexandre Franco Nkhalamba Thawe, a teacher in the Anglican Mission of Messumba (Niassa), stated that he was arrested on 11 September 1964. Officially freed on 8 January 1971, he stayed in prison until 26 February 1971, that is a total of nearly seven years; but was never tried. He testified further that from September to October 1964 he was kept in the prison at Vila Cabral; on 10 October he was sent to the penitentiary of Lorenzo Marques where he stayed until the month of March 1965; from March to July 1965 he was kept in the Machava Prison; in July he was transferred to the Pinto Teixeira working camps in Mabalane; he was sent back to Machava in 1968 and sent back again to Pinto Teixeira in 1969, where he stayed until 8 January 1971; he was then brought back to Lorenzo Marques, where he was finally freed in February 1971.

389. He stated further that the interrogation period was a most dangerous and critical time during which many prisoners lost their lives. While being questioned the prisoners were submitted to torture. Allegedly, the principal tortures consisted of:

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- (a) being "ironed" with a clothes iron on the back;
- (b) being suspended from the ceiling by the hands;
- (c) being kept on bended knees on sand for days;
- (d) being submitted to electric shocks;
- (e) being forced to swallow pills or receive injections that disturbed the nervous system;
- (f) being kept in a frozen room;
- (g) being whipped, being beaten with a "palmatoria" or with a baton (casse-tête);
- (h) being beaten with a perforated "palmatoria";
- (i) being tied and beaten by six policemen;
- (j) when the prisoner fainted, he was revived with water and the torture started again.

Many prisoners died because of these tortures, he said; others, in the war zone, were killed by soldiers. One of his friends, Estavao Njilamo, died in Machava as a consequence of the blows he received while being interrogated. Many prisoners bore scars; some become maimed or handicapped. According to the witness, during the period between 1965 and 1968 the army would take away the prisoners who had completed the interrogation phase and use them as mine detectors in front of their military convoys. The prisoners' eyes were closed with adhesive tape or with handkerchiefs and that they were tied and kept at the end of a rope of about ten meters. The vehicles followed them. The witness stated that the army no longer used prisoners for detecting mines, but people captured in the war zones. Reportedly, after the questioning, everything - the forced labour, the medical assistance, the food, the sleeping quarters, the water - is used to punish political prisoners.

390. Mr. Thawe stated that at the Mabalane prison the food was of very bad quality. It was mostly rice husks or maize of the quality normally given to chickens. In Machava it was even worse. Several times, he claimed, he saw people fainting from hunger, sometimes even dying. The quantity of food sufficient for one person was given to four, and the situation became worse after 1966. Prisoners were given half a cup of rice, 3/4 cup of beans, no sugar and never meat, only small bones "meticulously scrapped". Diarrhea, he said, was frequent, due to bad food.

391. Mr. Thawe said that at Mabalane the prisoners slept on the ground and that from 1967 onwards blankets were given out every two years. But it was much worse at Machava where, at the moment of his departure there were 4,700 prisoners

sharing the three wards reserved for the political prisoners. The people were stacked like tinned sardines, pressed against one another, the feet of one on the head of the other. In these conditions epidemics were reportedly frequent and spread easily among the prisoners. One could see that the sleeping barracks were used as a means to put an end to the prisoners' lives. At Mabalane, he continued, like in Machava, there were taps and showers. Nevertheless, during the hot season (the rainy season) the authorities used to cut the water and only turn it on every two days, while in the cold season (dry season) there was water every day but only from 3:00 to 5:00 in the morning. From November 1967 onwards at Mabalane, the witness continued, clothes were given out only once every two years: clothes which were quickly destroyed because of the labour the prisoners were forced to do. Sometimes, the witness stated, blankets were not given, and those that were given were ragged and full of fleas.

392. In regard to walking periods, the witness stated that two were given to the prisoners of the Machava prison, both of which together did not even come to one hour. Prisoners were locked in the rest of the time. At Mabalane the prisoners had more time to stay out because it was a forced camp. Mr. Thawe went on to say that the prisoners sometimes had to travel. If they had to go by train, they were locked up in cattle wagons. If they had to travel by boat, they were thrown into the holds like bags. Because of this some prisoners reportedly die and others become handicapped. During some of these sea voyages some of his friends and relatives were killed or hurt, as for example a teacher named David, who was killed on the voyage from Mozambique to Lourenço Marques. Chief Mohequene from Chinganga (Metangula) was also killed during the same voyage, as well as a boy named Aide, from Nampula who had his skull fractured. The boy's body is said to have been thrown into the sea. Reportedly, the Reverend Father Paulo Litumbi had both his legs broken and can only walk with the help of crutches. Teachers Aidao Lilinga and Jaime Farahane had their arms broken.

393. The witness stated further that complaints were not accepted. In 1968 six prisoners, including himself, addressed a written complaint to the inspector of the Prisoners' Section of the PIDE in Machava. The reaction from the authorities was to lock them up in disciplinary cells. They are said to have stayed there in solitary confinement from 6 August 1968 to 6 July 1969, that is, eleven months.

394. Mr. Thawe also stated that the prisoners, himself included, were submitted to forced labour in the Mabalane Prison. The day's work, under the sun, or in the rain, went on from 5 a.m. to 5 p.m. They worked on the plantations digging irrigation canals and while working were insulted and beaten by the prison wardens. The plantation's products - rice, maize, kenaf, etc., - were not for them to eat, he said; only the onion leaves and the rotten tomatoes and paw-paws were given to them. Prisoners were also forced to work in the houses of the PIDE agents from 5 a.m. to 7 p.m. On the other hand, he said, in the Machava prison, from January 1971 onwards, prisoners were forced to work on building constructions in the port, as dockers and on the railways.

395. Regarding burials, he stated, in Mabalane it was permitted to bury the deceased prisoners. Twenty to thirty prisoners were permitted to follow the

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burial procession and decently bury their comrade. In Machava, however, the prisoners knew nothing of what happened to the dead. From what was said, the bodies were used to fertilize the banana and fruit tree plantations.

396. Mr. Thawe went on to say that the prisoners coming from Ibo Concentration Camp were extremely thin; others had part of their bodies swollen or suffered from anaemia. The military police watched over the prisoners at Ibo, mostly war prisoners. They were kept locked in all the time and they had no right to walking periods. In the cells there were halves of barrels, used as toilets. In the morning the prisoners, naked, formed in lines and were forced to go and bathe in the sea and take with them the toilets to be cleaned. Going to the sea and coming back, they had to pass between lines of soldiers armed with sticks and whips, and they were beaten. Upon returning from the sea, the barrels were full of salt water and the prisoners were forced to drink it. The witness claims that because of these punishments, there were more deaths in the Ibo camp than in any other prison.

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C. GRAVE MANIFESTATIONS OF COLONIALISM
AND RACIAL DISCRIMINATION

1. Allegations concerning confinement of Africans
in villages surrounded by barbed wire

(a) Evidence relating to Angola

397. Mr. Pascal Luvualu testified that the indigenous farmers of Angola were put into strategic villages, called "ndandanda" or "peace villages" or aldeamentos in the Portuguese version, where the people lived on the brink of famine, disease, idleness, suffering and under the most strict control by the military, political and administrative authorities. The villages themselves were surrounded by barbed wire and the African population reportedly lived in a state of constant terror, and were unable to move about without safe-conduct passes. Mr. Luvualu said that the system of strategic villages had been developed by the Portuguese as the liberation struggle progressed, especially since the opening of the eastern front in order to turn people away from the national liberation movement, to prevent them from participating in the struggle and to isolate them from the influence of the MPLA. The inhabitants of the strategic villages had not lived in the same localities originally, but were diverse groups taken from scattered villages throughout Angola. (RT.139 pp. 2, 11, 36, 37).

398. Mr. Joao Jacob Caetano indicated that in the east, south-east, north-east, north and north-west of Angola, rural populations were subjected to displacement from the guerrilla areas and were concentrated in strategic villages surrounded by barbed wire, the first of which had been set up in 1963, and where they are watched by armed militia. Often they suffered from hunger because of the lack of productivity of the land and faced difficulties because of the different languages spoken in the distant regions. For instance, in 1969, the population of the villages of Piri Ngombe Quibaxi, Katende Ngombe and Mukiama and part of the village of Kibaxe Dembos region, district of North Cuanza, were transferred to the villages of Bonza near Sao Salvador and Quienza, near Madimba in the district of Zaire, in the extreme north-west of the Territory (RT.141, pp. 11 and 12).

399. Mr. Caetano said that the people in the ndandandas were kept under close vigilance and surveillance. Their contacts with people from other villages were restricted. They might not move about freely and must first consult the authorities, without whose consent they might not even go to the cultivated fields; even when allowed to go, they were accompanied by the militia. The purpose of the militia was to control the masses of indigenous inhabitants and to prevent them from having contact with the freedom-fighters, who were in the bush. Those confined to these villages, which, the witness said, could be called concentration camps, might not even carry soap, sugar or salt for fear that these items may reach the maquisards..

400. Mr. Caetano stated further that people who lived in the strategic villages were not necessarily political persons; Africans suspected of association with the

nationalist movement by the security police (DGS) were taken from their villages to more remote camps such as Sao Nicolau or to Missombo, but their families were obliged to live in the ndandandas which were organized throughout practically the whole of the Territory, since at present all of Angola was within reach of the military and political activity of the MPLA. Reportedly, there are from 200 to 600 families in each strategic village. The witness said that at one stage he had had contact with political organizations in the strategic villages through which the MPLA was able to free people living in such villages in the Galungo Alto sector, about 80 kilometres from Luanda (RT.141, pp. 22-25, 31 and 32).

401. Mr. Adao Gomes testified that he had been transferred from a prison in Nambugangongo, Angola, to a senzala de paz, 21/ called a "peace village", but which in fact, he said, was a village of death, a concentration camp. He stated that the people living in strategic villages were all former prisoners, including women, people who had been captured a long time before or more recently. The people were not allowed to leave the camps and must engage in forced labour (RT.142, pp. 77-86). Mr. Gomes' testimony was supported by that of Mr. Pedro Vida Garcia who stated that in order to better control the population the Portuguese had established "peace villages" which in fact were more like concentration camps, or like plantations where slaves performed forced labour (RT.143, pp. 51-55).

402. According to Mr. Lumeu Chikulu, in April 1972 the Portuguese forces captured the entire village of Chimowole, Moxico district, and took all the villagers, about 100 persons, to one of the ndandanda. He and his friends Jonas Alberto and Joao Jelamiya stayed in the camp until they managed to escape, but those who said they preferred to stay in the forest, including the village headman, were shot in the presence of the people 22/ (RT.139, pp. 72, 76-80).

403. Mr. Yata Nsamba testified that he had been brought with other people by force to a strategic village called Kameya. People who lived there came from different places, some from areas more than 100 miles away, and had to build their own houses. The houses already there served as barracks for the Portuguese soldiers. The people in the ndandanda were not allowed to cultivate their own gardens; the Portuguese gave them a small mug of grain maize per person. They were asked to go and bring their own food, for which they occasionally had to travel two or three days (RT/139, pp. 96 and 97).

(b) Evidence relating to Mozambique

404. Mr. Faustino Kambeu testified that because the armed struggle in Mozambique was based in the countryside, where about 90 per cent of the population lived,

21/ Senzala is defined as "black quarters" in the Portuguese dictionary. See also paragraph 364 above.

22/ See also paragraph 331 above.

the Portuguese resorted to mass killings, systematic raids on crops and the civil population, and the removal of people from their villages "to the so-called protected villages which, in fact, are concentration camps" (RT.138, p. 43).

405. Written evidence submitted by Father Luis Afonso da Costa, a Portuguese Catholic Missionaire expelled from Mozambique recently, provides the following information concerning strategic villages in that Territory:

"The first thing to do is to call them by their proper name: concentration camps. They are surrounded by barbed wire; the people inside need written permission from the guards to go to their places of work, etc. People are forced to move into strategic villages to protect them from an enemy who is not an enemy but whom the Government has made an enemy of. No compensation whatever has been provided for the destruction of these people's belongings. They are forced to move from one strategic village to another according to the dictates of the military situation. People are forced to move into these concentration camps where it is easier to control the inhabitants. This is the main purpose of the so-called strategic villages (aldeamentos). The document Visit to Montepuez - March 1969 describes the strategic villages in the region and orders that the same policy of strategic villages should be applied throughout the Tete district. Chapter (a), on the structure of a strategic village, states: 'It is rectangular, almost square, on level ground; the number of thatched huts varies between 200 and 300. Some villages have 400 huts, but it has been learnt that it is not advisable to construct villages with more than 250 if maximum control over the inhabitants is to be ensured; all the huts are roughly in line...'. The security which the authorities talk about and which is supposed to exist in the strategic villages means, in fact, that when FRELIMO attacks the guards or troops at the strategic village, or when a mine explodes inside it, or when something happens fairly nearby, it is the population that suffers the consequences. The population is always the scapegoat. They arrest 10, 15, 20 people or more and give them the benefits of protection - torture, prison, forced labour and even worse." 23/

406. In a second paper, Father da Costa wrote:

"The people were not consulted in any way as to the selection and structure of strategic villages. The authorities even went so far as to refuse to hear those who had the courage to speak, such as the delegation from the village of Mancomba led by Mr. Vasco which went to the administrative post at Marara to ask Administrator Nunes V. Santana not to force them to move yet again. They had been terrorized into moving to that strategic village, and now the order came for them to move elsewhere, to the village of Andiceni, where conditions for survival were even more precarious (drinking water very far away, etc.). No attention is paid to the living conditions of

23/ "Encore une année d'agonie... sans espoir de resurrection". op. cit., pp. 7 and 8

the population. The only thing taken into account is military strategy, and when this is circumvented by the military skill of the guerrillas of the Mozambique Liberation Front (FRELIMO) the population is moved, without the least scruple. That is what happened to the 420 heads of families who were concentrated in the strategic village of Mfidzi (Ferrao Coelho).

"The same with the strategic village of Bandala, where there were more than 60 families that had been moved, and at the villages of Matsatsa, Matema, Mancomba, Chirodzi, etc. And how many people, because they refused to obey or because they protested, were arrested, forced to work, tortured and even killed. That is what happened to, among others, a group of old people from the administrative district of Vila Gamito.... A missionary told me that, in one tribe in the Angónia area, some 200 people who had left the strategic village at night to return to their original homes had been found dead on the following day; the Portuguese army had razed, destroyed the houses and killed the inhabitants. The only way for anyone who refuses to be put in the 'goat pen' (corral de cabras - that is what the Africans call the strategic villages) to retain his liberty is to flee. Once he moves into a strategic village, which is really a concentration camp, he has not the slightest possibility of freedom; entry and exit are at fixed times, passes must be produced, barbed wire is installed, etc. A surprising thing is that these strategic villages are built from plans which are much more detailed than any used for urban planning in Mozambique. Everything is pre-established: streets 20 metres wide, two avenues 30 metres wide, each house 7 1/2 metres by 4 metres on a plot of land 20 metres square. Perfect order in a concentration-camp world. A whole people forced into a way of life which it has not chosen but has had thrust upon it.... Whole populations are forced to work without pay, cutting down trees, constructing quarters for the militia and for European officers, building roads, etc. None of the inhabitants may leave the strategic village without a pass giving his name, the village to which he belongs and the reason for leaving (work, the need to visit a hospital, etc.). If a mine explodes near a strategic village, or if the liberation movement stages an ambush of Portuguese troops, it is the population which suffers the reprisals - women, children, old men and youths are arrested, tortured, exiled, and in many cases killed. That is what happened at the strategic village in the Chipera zone. According to military statements, a mine exploded inside the strategic village, blowing up a military vehicle. The population was assembled and shot, and the whole village was razed...." 24/

24/ "Villages d'internement (Aldeamentos)", Mission de Marara, Tete, Mozambique, 10 avril 1972, 3 et seq. Paper submitted to the Working Group.

2. Allegations concerning aerial bombardments of inhabited villages and fields and the use of chemical warfare

(a) Evidence relating to Angola

407. Evidence concerning intensified bombings and the use of chemical warfare by Portuguese forces on inhabited villages and cultivated fields in areas under the control of the nationalist movement of Angola has been made public by Mr. D. Arslan Humbaraci of the Zambia Information Service, on behalf of the Popular Movement for the Liberation of Angola. The report says that the use of chemical agents by the Portuguese air force was first observed on 1 May 1970 when five planes were seen flying low over the banks of the Luena River, Eastern Angola, spraying fields of cassava, which is the basic food crop, and that helicopters of the South African air force have been co-operating in the use of cacodylic acid, picloram and other dangerous chemicals for the purpose of defoliation and the repression of the African people. 25/

408. Mr. Pascal Luvualu testified that in addition to the traditional practices of torture, the Portuguese forces are perfecting their methods of repression and massive extermination in Angola, their operational activity being characterized by a scorched-earth policy, by intensive bombing of peaceful populations and by the use of napalm and other chemical and toxic agents (RT.139, pages 8-10). Mr. Luvualu's testimony is confirmed by another witness, Mr. Pedro Vida Garcia (RT.143, page 56).

409. According to Mr. Joao Jacob Caetano, the Portuguese army uses all kinds of warfare in Angola. Various types of bombs are said to be dropped on the civilian population, from conventional bombs to the "pineapple"-type bombs; from ordinary napalm bombs releasing a temperature of from 900 to 1300 degrees, to Progel PTI napalm bombs, releasing a temperature of 2,000 degrees. Mr. Andrade stated that he had witnessed a bombardment with napalm bombs in the area of Ngalama, a district of North Cuanza, on 27 November 1967, and that Portuguese aircraft had bombed with napalm a school in an area controlled by the nationalist movement; 13 children were burned to death and 16 were seriously wounded, of whom 10 died later as a result of their wounds. He stated further that since 1965 the Portuguese have introduced chemical warfare in Angola, having intensified chemical spraying of cultivated fields after 1970 (RT.141, pages 12, 13-15).

25/ See Guardian 6 July 1971; Le Monde (Paris) 9 July 1971; Standard (London), 7 July 1971; Morning Star (London), 8 July 1971; The Standard (Tanzania), 8 May 1971.

410 Mr. Joao Jacob Caetano stated that he also had witnessed the use of napalm bombs in Ngalama on 27 November 1967 (RT.141, page 36). Mr. Caetano went on to say that the Portuguese forces used napalm in 1971 and 1972 as well, and that Soviet journalists who visited the eastern front of the liberation movement had the opportunity to see the effects produced by these chemical products in Angola (RT.141, pages 33-35). Mr. Caetano stated further that an analysis made in the Netherlands of the samples which his comrades had collected in the Territory indicated that those chemical products were 2,4 Dichlorophenoxyacetic acid, 2,4,5. Triclorophenoxyacetic acid, Cacodylic acid, Pichloran and Tordon, which he believed were manufactured in the Federal Republic of Germany (RT.141, pages 17, 47).

411. According to evidence given by Mr. Sebastien Lubaki, since 1963 the Portuguese army has perfected a number of chemical products of a destructive nature for use in a war of repression against men, plants, and even the soil, to force the Angolan nationalists to capitulate. He said that those products had become more and more violent as the nationalist struggle developed, and had achieved such a degree of destruction that, together with conventional bombs, they constituted the main weapon of the Portuguese forces against the people. Since 1969 the High Command of the Angolan Revolution had received daily reports of chemical bombardments and the spraying of defoliants, herbicides, and soil sterilizers by the Portuguese forces throughout the operational front and in the liberated areas, where hundreds of men, women and children died, hundreds of kilometres of land lost vegetation, and hundreds of plantations were destroyed. As a rule, those products were dropped from aeroplanes adapted for those operations, which fly at low altitudes over selected regions; they were protected by jet planes and frequently by Alouette helicopters, in an attempt to prevent any kind of counter-attack or intervention by Angolan partisans or combatants. Mr. Lubaki said that the products used by the Portuguese army were of three kinds: herbicides and defoliants, soil sterilizers, and lethal and incapacitating agents. The objectives pursued by the Portuguese in resorting to this kind of warfare were the following: first, to reduce to a minimum the plant coverage of the forest areas so as to increase visibility for the air force, thus preventing the construction of villages and nationalist posts or bases in certain strategic areas; secondly, to destroy plantations of the combatants or freedom-fighters and of the population, thus compelling them to abandon the liberated areas; and thirdly, to compel the freedom-fighters to leave the liberated areas that were polluted and contaminated and either to capitulate or to seek refuge in areas more accessible to the Portuguese forces. Mr. Lubaki elaborated on the description of these products and their effects on certain plants and on humans, as well as on their consequences for the Territory, as follows:

Soil-sterilizing chemicals. Description: Liquids; they take the form of highly concentrated gases when sprayed from Dakota-type planes. Colour: white. Odour: DDT and biting. Taste: acid. Effects on plants and soil: Defoliation of plants with faster action than with the use of herbicides. The soil is rendered completely unproductive and only certain wild plants make their appearance a few months after the contamination.

/...

We believe that these products are either highly concentrated herbicides or else herbicides associated with other agents so as to combine the characteristic effects of both.

As in the case of the herbicides and defoliants, these products are harmful even to human beings. Their ingestion, whether through inadvertence or carelessness in eating contaminated plants, in general results in diarrhea and cholic, usually fatal. Likewise children who have had contact with these agents have suffered injury to their eyes, their lungs and their intestines. Two babies a few months old died after being sprayed with these chemicals, suffering agonizing convulsions that lasted, respectively, 30 and 42 minutes.

Lethal agents. Description: Gas. Colour: white or gray. Odour: biting. Taste: acid. Effects on human beings: (a) Coughing accompanied by convulsions. Tearing and inflammation of the eyes; (b) Burning sensation on the skin, coughing, vomiting, general fatigue.

We have noted that in certain areas the products we find of the lethal type do not produce the same effects on persons contaminated by them as they do in other areas. That is, in certain areas the effects are very violent and almost always fatal, while in others they are less violent and rarely fatal. We believe that the Portuguese forces employ one or the other of these concentrations, depending upon whether they are aiming at mere harassment or at genocide.

The most nefarious consequence, both immediate and long-term, of this shameful war of repression is without doubt the resultant contamination. By their actions, the Portuguese colonialists are condemning Angola, as a Territory and as a nation, to pay the price of their hateful presence through the horrors of an unbreathable atmosphere, the sterility of its once so fertile soil, the destruction of the fauna and flora of the country, and above all, the disappearance of billions of insects required by nature for its continuance and growth. The Portuguese colonialists will leave behind them cholera, tuberculosis, leprosy, typhoid, and a whole series of diseases resulting from the inhuman conditions under which they are waging their war of repression. In short, they will leave a legacy of physical misery compounded by the destruction of villages, of families and of human beings.

By way of example, the following is a table of statistics concerning certain areas in the field of health in Angola from 1969 to 1971:

/...

| DISEASES | 1969 | 1970 | 1971 |
|------------------|----------|-----------|-----------|
| Tuberculosis | 59 cases | 119 cases | 537 cases |
| Typhoid | 102 | 237 | 1,068 |
| Leprosy | 19 | 87 | 249 |
| Asthma | 893 | 2,976 | 3,672 |
| Fatal diarrhea | 473 | 1,561 | 2,937 |
| Abortions | 353 | 693 | 1,007 |
| Premature births | 87 | 322 | 653 |

To what should we attribute these increases if not to the intensification by the Portuguese forces of the use of chemical agents in their repression? Moreover, these facts also explain why it is that among the Angolan refugees in the Republic of Zaire the number of fatal diseases is increasing. These same refugees have had to cross through hundreds of kilometres of contaminated forest areas before their arrival in Zaire (RT.142, pages 7, 8-10, 11, 12).

412. Mr. Samuel Abrigada stated that chemical warfare was carried out in the northern zone of Angola, which extended about 150 kilometres from lower Zaire to approximately the thirty-first parallel; the north-central zone, which covered the Malange and Cuanza-South districts; the eastern zone, which included the Luanda and Moxico districts; and the northern zone where the Uige, Zaire, Luanda and Cuanza-North districts are located. Chemical warfare by the Portuguese forces was concentrated in the virgin forest, because the indigenous population often sought refuge there. The witness reaffirmed the information supplied by Mr. Lubaki to the effect that the worsening of the medical-sanitary situation in Angola from 1969 to 1971 26/ was a result of chemical warfare (RT.142, pages 34-36, 41 and 42).

413. Dr. Sebastiao Roberto, a physician practising at the Sara Centre, Kingantoko Hospital, located in the vicinity of Kinshasa, Zaire, where most of the sick refugees coming from the interior of Angola are received and treated, declared that some patients with injuries caused by napalm or other chemical products or agents were received at the Sara Centre, even though most of them died en route. Dr. Roberto testified that he had received three patients suffering from severe burns and that he had been able to save two; the third one, a woman, died because she was too seriously affected by the chemical agents. In March 1972 he received several patients suffering from diarrhea, all of whom died. An analysis made by a major laboratory at Dr. Roberto's request confirmed that they were not cases of cholera, as he had at first suspected, but rather of toxic diarrhea caused by chemical agents. The doctor concluded by saying that the traces of chemical products found in the patients definitely indicated that chemical warfare had been used by the Portuguese forces in Angola (RT.145, pages 2, 6-11).

26/ See paragraph 411 above

414 Mr. Antonio Martins, Secretary of Education in the liberated areas of Angola, testified that between 1970 and 1972, 39 schools were destroyed by bombings in the areas of Caxito, Ambriz, Dembos and Cuanza Norte, and that every day, as a rule from 8 to 12 a.m. and from 2 to 3 p.m., the villages and schools were bombarded, making it impossible to continue with a coherent education programme. As the schools are generally built under the trees, chemical products were dropped daily from Portuguese aircraft, causing the leaves to fall off the trees and leaving the schools visible and exposed. The chemical product sprayed was a cloud-like substance, a white liquid that looked like oil on the leaves. According to the witness, once the planes discovered where the schools were, they bombed them; some of the children were able to get away; others were killed on the spot. He said that bombardments had killed 11 of the pupils in the Santa Maria School, Kikulungo; 12 children in the Ambriz region; two in Caxito and four children in Santa Cruz. Mr. Martins testified further that he had personally seen the bombing of the Sao Fernandes School, five kilometres from his home, on 7 March 1972 at 10 a.m., when one of his students, Domingos Rodrigues Miguel, who was captured alive, had his right arm and left ear cut off by Portuguese soldiers landing from six helicopters. ^{27/} Reportedly, the bombing was carried out by eight jet aircraft, three of the Dakota-type adapted for jungle operations, and two bombers, followed by helicopters. The witness also testified that on 12 January 1972 a hospital with a visible Red Cross flag in Coba, Council of Ambriz, district of Luanda, was destroyed by bombings which killed six of its patients. He was there when the first bomb fell and managed to run away with his eldest son, who was ill and hospitalized there. Mr. Martins went on to say that the daily bombings threatened the stability of education programmes in the liberated areas. When the teachers saw a reconnaissance plane over a certain area, realizing that the bombers would follow, they were obliged to take steps to transfer the pupils to another school, outside the bombing area (RT.143, pages 9-22).

415 Mrs. Marta Fernandes testified that during the years 1970 and 1972 the Portuguese forces intensified the bombings, which occurred daily. Bombings were carried out in general in civil and urban centres in the Mata-Kanga area. She had observed pregnant women who had abortions and women who gave birth to children and who died a few minutes to a few hours afterwards. The witness cited the cases of Dona Joana Kanga, who died on 12 June 1971 as a result of the conditions under which she gave birth in a region subjected to bombings by aircraft, without any means of protection; of Mrs. Conceicao Zinga, who died under the same conditions on 2 October 1970; and of Mrs. Rebecca Conga, who died under the same circumstances on 15 June 1972. Mrs. Fernandes testified further that in the region where she was living chemical products were spread, at first once a year and gradually increasing to a frequency of every three months, causing a number of diseases such as pneumonia and tuberculosis (RT.143, pages 27 and 28).

^{27/} See also paragraph 372 above.

(b) Evidence relating to Mozambique

416. A recent newspaper report 28/ made available to the Group maintains that the Portuguese air force, assisted by South African mercenaries, has been waging chemical warfare against the nationalist positions in the jungles of northern Mozambique. According to the newspaper article, secret missions by heavily-armed aircraft escorting defoliant-spraying planes began in the first weeks of April 1972 in an attempt to wipe out the food supplies of the guerrillas. One of the chemicals said to have been used against the areas of the Cabo Delgado district is Convolvotox, which not only kills broad-leafed plants but can also inhibit fertilization. Reportedly the base of operation was at Nangololo, and as the South African planes skimmed over the jungle at tree-top level, spraying the area with the chemical agents, Portuguese Harvard aircraft swooped ahead of them firing machine-guns and rockets into the bush, while overhead, two air force Fiat jets dropped bombs of 50 and 100 kilogrammes.

417. Mr. Chissano testified that, since the beginning of 1972 the Portuguese army had been using chemical weapons in the liberated area of Cabo Delgado, Mozambique, with the aim of destroying the people's means of subsistence. He cited the testimony of agricultural expert Atanasio Saidi which emphasized that cassava, sweet potato, banana, paw-paw and pumpkin crops were affected and destroyed. He confirmed the report in the previous paragraph. He stated further that napalm and other bombs such as pressure bombs, had been used and that he knew of cases where people were killed or injured by napalm bombings. The witness stated that the Portuguese aimed their bombs at the crops, first of all, to starve not only the FRELIMO soldiers but also the civilian population and to force the people to go to the strategic villages and to the concentration camps (RT.135, pp. 13-15, 16, 31-41, 47).

418. In written testimony Mr. Atanasio Saidi indicated that at the beginning of 1972 in the Province of Cabo Delgado, in the region between the M cimboa da Praia-Mueda road and the Messalo River, the Portuguese started using herbicides in order to destroy the people's crops. Four planes were used in these operations: two of them did the spraying, while the other two protected them. Two or three days after the spraying, most of the plants started to dry up. The potatoes rotted after the leaves had completely dried. The banana trees, cashew trees, cassava plants and papaya trees dried up completely (Exhibit No. 15).

419. Miss Mariana Matola testified that the Portuguese forces had dropped bombs from planes on cultivated fields, devastating the crops of villagers, who were then forced to flee their villages to areas of difficult access to the Portuguese, around Catur in the province of Niassa, Mozambique (RT.136, pp. 6-10). Another

28/ Sunday Times (London), 9 July 1972.

witness, Mr. Faustino Kambeu, testified about alleged mass killings, systematic air raids over crops and civil population, and about the removal of people from their villages to the so-called "protected villages" which, in fact, are said to be concentration camps (RT.138, p. 43).

3. Allegations concerning racial discrimination

(a) The extent of racial discrimination

420. In spite of the repeal of the 1954 Act on the Status of Indigenous Persons of Portuguese Nationality in the Provinces of Guinea, Angola and Mozambique, known as the Native Statute, by Decree-law No. 43,893 of 6 September 1961, Mr. Joaquim Chissano complained that the Native Statute was still enforced in Mozambique, where different identification documents were used to distinguish between the white Portuguese and the indigenous African. One was the identity card for the white Portuguese (bilhete de identidade); the other was the identity carnet issued for indigenous Africans (caderneta de identidade). The identity card for the white Portuguese was a simple card; the identity carnet for the black African or indigenous African (indigena, now called autoctona) was a carnet with several pages to be put on the record of tax payments by each indigenous African, or autoctona, as it used to be done before the abolition of the Native Statute in 1961 (RT.135, pp. 11, 12, 41, 42). Another witness, Mr. Kambeu, said that, to qualify as an assimilado (now called registrado), an indigenous African (or autoctona) who reached a certain stage of education might obtain an identity card, that is, the kind of identity card a white Portuguese held. Mr. Kambeu pointed out, however, that those black Africans who were classified as registrados (former assimilados) were regarded as a separate group by the Portuguese authorities and that an identity card issued to a black African registrado could be revoked at any time by the Portuguese authorities; the same liberty was not taken with an identity card issued to a white Portuguese (RT.138, pp. 48, 51).

421. Mr. Chissano stated that if a Portuguese went out after nine o'clock at night no one asked him to produce his identification papers, but that if a black African was seen in the street at night the policeman stopped him and asked whether he had a caderneta indigena. If he produced the identity carnet he was free to go but was not allowed to remain on the streets after nine p.m. Mr. Chissano went on to say that there was evidence of discrimination everywhere: in the Cabora Bassa dam construction, where the Tsongo village township was for the Europeans and the Tsongo quarters for the black workers; in the army, where there were no black Portuguese officers, with the exception of one or two appointed in accordance with the new strategy of psychological warfare; in restaurants in Lourenço Marques or Beira, where one was served only by black natives, never by whites; in the fields, where a white man was never seen working under forced labour on the sugar plantations; and in church, where the front chairs were reserved for white people, while chairs for black Africans, if they existed, were always to be found somewhere behind, in a separate area. Mr. Chissano elaborated his testimony regarding the discriminatory treatment of black Africans in church in Mozambique, stating that

the Catholic Church has always worked together with the Portuguese Government. The Catholic religion was reportedly a State religion, and the priests collaborated with the Portuguese authorities by encouraging the Africans to obey the State. Before any church ceremony, the people were obliged to sing the national anthem of Portugal and salute the Portuguese flag. If natives did not obey this regulation in church, or if they sat in places where they were not entitled to sit, punishment was forthcoming from the Portuguese administrator, or chefe do posto, and not from the priest, even though the incident took place in church. The witness stated that some priests were imprisoned because they had revolted at seeing the Portuguese using the church to further their political ends (RT.135, pp. 11, 12, 41-45).

422. Mr. Paulo Jorge confirmed the written testimony 29/ of Father Waldo Garcia of the Holy Spirit Congregation - recently expelled from Angola where for several years he had been a professor at the Major Seminary in Nova Lisboa - to the effect that there were separate churches in Angola for whites and blacks; that there were parishes reserved exclusively for whites, while blacks went to what were known as missions. Mr. Jorge said that, especially in the large towns, there were churches where both whites and blacks went, but that during mass the whites sat on one side and the blacks on the other; and that whites and blacks even used different doors to enter the church. According to the witness, priests agreed to this policy because they are practically compelled by the security policy (DGS) to adopt such attitudes (RT.139, pp 13-16; also RT.141, p. 11 (testimony by Mr. Caetano)).

423. Mr. Chissano cited the cases of lawyer Domingos Aronca, as well as those of Dinis Mondlane and Joao Baptista, as typical examples of racial discrimination applied to natives of the African territories under Portuguese domination. Lawyer Aronca was arrested, condemned on false charges and transferred to Portugal for security reasons. As he fell ill he submitted a petition, together with other lawyers, to obtain their release. The white lawyers were reportedly released on parole, whereas Aronca was held in gaol (RT.132, pp. 24-26).

424. Mr. Faustino Kambeu, Executive member of the Mozambique Revolutionary Committee (COREMO), testified that in Mozambique there was discrimination in the political and civil fields. A statement by the present military Governor, General Kaulza de Arriaga, was quoted to demonstrate that the opportunities for indigenous Africans to take part in the central Government were very limited, because promotion of Africans was seen to be detrimental to the interests of the white settler. The statement reads: "We shall be able to keep white rule in Angola and Mozambique - which is a national objective - only if the growth of the white population is such that it follows and slightly exceeds the production of Negros evoluidos. 30/ Because if the opposite occurs, two things will surely happen: either we set up apartheid - or we have black governments - with the results we have already seen." (RT.138, pp. 36, 39).

29/ See Angola in Arms, information organ published by the MPLA in Tanzania Vol. 2, April/May, 1972, p. 7.

30/ "Negros evoluidos" may be translated literally as "evolved blacks".

425 According to Mr. Kambeu, the deplorable situation of indigenous Africans in the fields of economy and education made it difficult for them to acquire qualifications for higher posts. The actual recruitment of personnel in the public service had revealed discriminatory practices and tendencies based on race, and the situation was being further aggravated by the constant inflow of white settlers. The aim of white settlement in the territories was to reduce as much as possible the opportunity of Africans for better-paid jobs. The witness quoted another policy statement by Governor Kaulza de Arriaga on the subject, as follows:

"The povoamento /settlement/ doesn't intend to balance the black demographic power; it intends to balance the amount of Negros evoluidos because with 'tribal negroes' there is no problem if they grow in a great quantity. The problem is with the Negros evoluidos. As we, thank God, have no possibility to promote all the negroes, it is possible, almost sure, that we can settle there enough people to balance the Negros evoluidos."

The Governor added that in the field of economy the racial discrimination had been expressed by the Governor in the following terms:

"If the 'family allowance' needs to be high in the Metropole - Portugal - so that people can have lots of children, we can't do the same with the Negroes, otherwise they will also get lots of children." (RT.138, pp. 40, 41).

426. Mr. Sebastiao Sobrinho maintained that equality between indigenous Angolans and white Portuguese did not exist in the Territory. He recalled the matter of different identity cards, stating that when a father registered a new-born child and requested a birth certificate for him, the certificate would have the drawing of a person with an animal tail, if it was for a black child, whereas the birth certificate for a white child would not have such an emblem. He also mentioned cases of abuse by the Portuguese soldiers of Angolan women who, allegedly, were mere instruments for them. Mr. Sebastiao Sobrinho stated that if the Portuguese wished to take a daughter of a black Angolan, the father could not object because he would risk losing his life; whereas, a black Angolan would not dare to have relations with a white Portuguese woman because he, in turn, would be massacred immediately (RT.143, pp. 62-65 and 66).

(b) Forced labour and discrimination regarding wages 31/

427. Mr. Ennals stated that discrimination regarding working conditions and salaries was the rule in the African territories under Portuguese domination. Mr. Ennals' testimony also included reports on forced labour (RT.130, p. 41).

428 Mr. Luvualu stated that 57 per cent of Angola's wage earners were forced labourers, especially in the primary sectors, where the frightful figure of 89 per cent had been recorded. He also stated that particularly atrocious forms of forced labour were carried out through the compulsory enrolling of women and children in the building and maintenance of roads, and through unpaid labour as a form of punishment for fallacious reasons. Instead of employing paid labour,

31/ Detailed information on trade unions forced recruitment of workers and forced labour will be included in the report of the Working Group to the Economic and Social Council under resolution 1599 (L)

the Portuguese administration always sent the police to get in touch with the traditional chiefs, who then mobilized the Angolans in road work or in manufacturing bricks and building houses for the administration, without wages. When a woman could not work because she was ill, very young children were taken to work in her place. He himself had had that experience when he was 12 years old. He added that if the women and children refused a work assignment, they were "arrested" to do it and must always bring their own food to eat along the roads or wherever they had to work. When they had completed the work assignment they were allowed to return home (RT.139, pp. 7, 42-45, 46).

429. Mr. Sebastiao Sobrinho testified that during the coffee harvest indigenous Angolans were sent to work on the plantations of Portuguese settlers to harvest the coffee. At the end of the harvest the workers were given one ordinary blanket, 900 escudos, 32/ out of which they had to pay taxes, and some clothing consisting of two shirts and a pair of trousers. From the 900 escudos the worker had to pay his taxes, and if he did not have enough money to pay them, he was compelled to resort to members of his family to help him. If he still did not have the amount to pay the taxes, he was subject to severe punishment. Even his children were compelled to work for the Portuguese settlers during the coffee harvest season. At the end of the harvest he was given some clothing, a khaki shirt, a pair of khaki trousers, a blanket and 60 escudos. The witness added that the women are compelled to work on the roads at all times without being paid. Sometimes they were given some rotten fish and manioc flour - merely to permit the Portuguese to say that they treated them well, in order to deceive the public. The Portuguese often punish the Angolan workers by beating them with the palmatoria, 33/ starting with 100 blows. If an Angolan did not finish the work that had been assigned to him on the plantation, he got 50 palmatoria blows on the hands, 25 on the feet and 25 on the buttocks. At the same time, certain post chiefs used the whip. When they had to reprimand Angolans, instead of just confining themselves to verbal means, they whipped them (RT.143, pp. 61, 62-65). Mr. Luvualu also testified that the Angolan worker was a victim of wage discrimination, citing a secret report by Dr. Afonso Mende, Director of the Institute of Labour and Social Welfare and Security of Angola, to the effect that the average monthly wage of the farm workers and the worker engaged in similar work, always of African origin, was 600 escudos, that is, \$22, whereas that of a non-farmer worker, basically of European origin, was six times higher (RT.139, p. 7). According to testimony given by Mr. Vida Garcia, on the plantations the approximate wage of workers is nine escudos per day and there are no schools or medical assistance (RT.143, pp. 51-55).

430. Another witness, Mr. Paulo Jorge, recalled that in spite of a law establishing that people should receive the same wages for the same work, there was racial discrimination in that a black Angolan did not receive the same pay as a white Portuguese, even though the law said that they were all Portuguese citizens (RT.139, p. 32).

32/ One escudo equals \$US 0.035.

33/ See foot-note 3 paragraph 347 for a description of the palmatoria.

431. According to Mr. Muila Mavungo, a former prisoner at Sao Nicolau from 1963 to 1965, wives and children imprisoned with their husbands in the Sao Nicolau camp are forced to do the same hard work, side by side with the common prisoners, working in the quarries and fields and in the salt mines (RT.140, pp. 37, 40). 34/

432. In written testimony Mr. Kemiasse Macossa stated that in April 1971, when he arrived at the border, the Portuguese authorities took away his money and his radio to pay taxes, without giving him a receipt. A month later, he said, the soldiers came to Massapa and took away four people: Quediasse, Castro, Henriques and himself. They were taken to Mague to build an airport. They worked two months and at the end, they were given 50.00 escudos but did not receive food or lodging. They had to provide for themselves, he said, and while working were beaten if they stopped, even if it was only for a short period. He stated further that in Mague there were many people forced to work under the same conditions as theirs.

433 Mr. Adao Gomes testified that in April 1971 when he was interned in a strategic village, he and other political prisoners were forced to work without pay. In spite of constant pain from a dislocation of the spinal column, he was forced to work from 6 a.m. to 7 p.m., seven days a week, without any rest 35/ (RT.142, pp. 81-85).

434. Mr. Chissano relayed information passed on to him by a worker from Cabora Bassa who had escaped to join the freedom-fighters. According to this worker, the majority of the people who are building the Cabora Bassa Dam are brought from provinces which are far away from the area. However, people from the province itself and from areas where FRELIMO is well known are not taken to Cabora Bassa Dam. So in order to get people to go and work at Cabora Bassa the system of forced recruitment of labour is used in the same way as for work on sugar-cane plantations.

435. Mr. Chissano said that there were many ways to apply the procedures of forced labour in the African territories under Portuguese domination. One was by denying employment to people where they wanted to work, in order to say later that they were unemployed. Since it was forbidden to be unemployed they were given a job by force. The other way was to go to the tribal chief and request him to produce a dozen "heads" for the Cabora Bassa project, as the Portuguese call African workers. That contribution of workers was sometimes called an "arm contribution", ("contribuição braçal"), which meant a contribution made with one's arms (RT.135, pp. 51-52).

436. Mr. E. E. Njolomola declared that following his imprisonment in July 1970 with his parents in the village of Chimpene, province of Tete, Mozambique, on

34/ See paragraph 333 above.

35/ See also paragraph 370 above.

suspicion of concealing FRELIMO guerrillas, they were subjected to forced labour while being escorted by Portuguese soldiers: sweeping offices or working on roads. At the end of the working day the soldiers would tie them and take them back to the prison, where they were allegedly beaten and made to sleep in chains 36/ (RT.136, pp. 46, 51).

437. According to Mr. de Andrade, in Angola there were more than 500,000 wage earners in the private sectors, but only 60,000 belonged to trade unions. That meant that the trade unions were completely controlled by the Government. Since European members numbered practically 50,000, it could be seen that discrimination does exist in employment, the number of registered trade union members being very little more than the number of European wage earners. The witness stated that if the Portuguese law were really intended to protect the rights of all workers it would not be compulsory for European workers alone, but would also oblige Africans to become members. As it was, however, the trade unions were controlled by European employers, not by Africans (RT.141, p. 31).

(c) Discrimination in the field of education and training

438. Mr. Kambeu testified that in the field of education and training the effects of racial discrimination were bitterly felt by African children. Discrimination in education was characterized by the existence of a dual system of primary education and allocation of funds. There was compulsory primary education for the children of the so-called civilized sector of the population and only voluntary primary education for African children. One system involves what are called postos escolares, restricted to children of Africans who were not assimilados or registrados. /The children who are in the postos escolares have no connexion with the Portuguese./ The other system, in the urban areas, involves schools attended by the children of the so-called civilized Africans, or assimilados, now called registrados, and by the children of white settlers. The witness quoted what he called the "integration policy" of Portugal as follows: "We must not be too efficient in the promotion of Africans. We must promote them, but without exaggeration." (RT.138, pp. 41, 47).

439. Mr. de Andrade stated that education in Angola, as in all the African territories under Portuguese domination, had always been education for the élite, discriminatory education based on race, and that schools were established where there were urban centres and where the European population needed them. The African population - which, up until a certain time, were considered as assimilados, that is the Angolans who came from the group of so-called colonial auxiliaries - could only hope for vacancies in these schools, both elementary and secondary. This was even before the introduction of higher education. Because of the

36/ See also paragraphs 347 348 and 384 above.

different social conditions and because the schools were established where there was a European population, a basic social and economic discrimination already existed, which determined the distribution and the possibilities of admission to these schools. The witness said that about 40 per cent of the black Africans attended secondary school and that fewer than 10 per cent went on to higher education. He proceeded to say that the figures were drawn up on the basis of calculations according to information supplied by clandestine groups of nationalists in the towns and in all parts of Angola, calculations which could be found in United Nations reports for both secondary and higher education. Mr. de Andrade went on to say that the same opportunities did not exist for the African population as for the European because, from the economic and social viewpoint, the African population was discriminated against. Education must be paid for at all levels, and African families, of course, like all families that were integrated in a colonialist society, did not have the wherewithal to pay for such studies. That was why the percentage of African students was always substantially lower than that of European students. The costs of secondary and higher education was disproportionate to the earnings of African families (RT.141, p. 27).

440. Mr. Sebastien Lubaki stated that education was systematically repressed in Angola, especially as it related to the common people, as could be noted by the fact that among the great majority of the refugees who came to nationalist headquarters 80 per cent were illiterate. That situation, deliberately and expressly created by the Portuguese, was dictated by their desire not to educate Angolans since the educated Angolan was capable of replacing a Portuguese in a particular post. The few black pupils who attended the official schools throughout the Territory of Angola were the children of assimilated native civil servants. Hence the number of white children who were accepted in schools far exceeded that of black children. Mr. Lubaki paid tribute to the missionaries who had established primary schools as early as 1920; otherwise there would not be even the small number of intellectuals, for the State had not created any official schools before 1950. Mr. Lubaki said that in spite of the creation of these State schools, attempts had been made to put a brake on the development of education in general in the Territory. Black African students must study for eight years in order to finish the four years of primary school, so that Angolans could not have a full education. Moreover, the masses were not able to send their children to the schools for the children of civil servants and registrados (RT.142, pp. 21, 22, 37 and 38).

441 Mr. Abridada indicated that despite the increasing number of students in the Angolan elementary schools, the number of black school children had remained the same. The white population had gone up from 200,000 to 500,000 with a corresponding increase in the number of white school children; however, with respect to the Africans the figure has remained practically the same (RT.142, p. 38).

(d) Discrimination in land holdings and forced resettlement of Africans

442. Mr. Chissano testified that to construct the Cabora Bassa Dam a large part of the Native population - many tens of thousands - had been removed from its land and resettled in concentration camps, first in order to allow the building of the dam,

and secondly to make way for new Portuguese immigrants and other whites who wished to establish themselves in the area, where an irrigation scheme was being built to benefit the incoming white population. The witness maintained that the inflow of immigrants was intended to effect the disequilibrium envisaged in the "Lessons of Strategy" of General Kaulza de Arriaga 37/ so as to create what they call "a new Brazil". The witness recalled the previous experience of the people of Mozambique when a dam was built in the Limpopo Valley in 1950, a settlement which had benefited only the very poor Portuguese who came from Portugal and became rich in the Territory. (RT.135, pp. 48-51).

443. According to Mr. Kambeu, another aspect of racial discrimination is manifested by separate laws for Africans, who were classified as "rural populations", a classification which excluded whites living in the same area (RT.138, p. 41).

444. Mr. Lubaki testified that cases of discrimination, oppression and exploitation continued to occur in Angola. The primacy of the rights of the whites over the rights of the blacks became more entrenched through a series of manoeuvres of the Portuguese administration, which sought to consolidate its individual and collective control over Africans at all levels, both in the cities and in the rural areas, in order to repress any attempt at so-called subversion. The witness asserted that those sordid manoeuvres generally entailed a series of violent operations characterized by constant raids in the city of Luanda once a month; arrests and deaths in the prisons, and by bombardments, shootings and the destruction of villages in the rural areas. Mr. Lubaki said that at the beginning of January 1972, the administrators of the Humbe region, in the Angolan district of Cunene, received the order from the Government to proceed with the transfer of a number of African villages towards the more southern regions within the framework of a reorganization of the Territory, which was to precede the different stages of the "Cunene operation", including the construction of the Cunene dam and the establishment of settlements for the white Portuguese and South Africans. Knowing that the African villagers were not in agreement with this new measure of expropriation of their land and property, the administrators allegedly decided first on the use of certain tricks and then on the use of force to ensure that their orders were executed. The result of that situation had been an uprising of the people, which had extended throughout the Cunene district. The witness stated that according to information received by nationalist commanders in the eastern region of Angola, over 3,000 Africans had been killed and over 17,000 arrested and transferred to the concentration camps in the Moçamedes desert 38/ (RT.142, pp. 5 and 6).

445. Mr. Abrigada indicated that indigenous Africans had been chased out and driven away from the fertile lands of the Colonato de Cela area, along the Cunene river, in Angola, where there would be large-scale irrigation, so that the land could be used for the settlement of Portuguese immigrants and other white settlers.

37/ See paragraph 425 above

38/ See also paragraph 330 above

Mr. Abridaga stated that 200 South African farmers had already bought land along the Cunene valley to settle there (RT.142, pages 39, 43-45, 46). This testimony was confirmed by that of Mr. Joao Ngonga who stated that the Portuguese wanted to expel the native inhabitants of the fertile Cunene Valley and take possession of the land in order to settle about 500,000 Portuguese. He said that from the area of the Humbe Dam, the first of 28 dams to be constructed in the region, at least 1,000 Native Angolans would be removed. He estimated that the total number to be forcibly resettled could be about 100,000. Recalling the incident of the Colonato de Cela, the witness stated that at the beginning, in 1970, the Portuguese authorities had ordered the people to move out. When the natives refused, the authorities decided to have its orders carried out by force. The Portuguese forces had attacked villages, seized cattle, killed people who could not run away and arrested around 17,000 persons, who were taken in vehicles and trains to the Sao Nicolau concentration camp in the Moçâmedes desert 39/ (RT.143, pages 29-38).

(e) Freedom of expression, assembly and association

446. Mr. Martin Ennals, Secretary-General of Amnesty International testified that there was a certain difficulty in terms of access to information in the African Territories under Portuguese administration, where there was a lack of freedom of speech. He maintained that if someone tried as a priest in Mozambique had done, to report situations that had in fact occurred, such as the massacre of 100 women and children for alleged support of FRELIMO, the person concerned risked imprisonment; three priests, in fact, were so detained at the present time (RT.130, pages 41-42).

(f) Freedom of movement and residence

447. Mr. Joao Jacob Caetano indicated that in order to prevent indigenous Africans from moving about freely, the Portuguese administration had imposed the need for all Africans to carry residence certificates. The official regulation was that everyone over the age of 12 must carry a residence certificate, but in the area where he was active the regulation applied to indigenous Africans only. An African, he said, must request an exit permit on the basis of the residence certificate if he wanted to move from one village to another (RT.141, pages 38-41).

(g) Discrimination regarding living conditions, health and prison treatment

448. Mr. de Andrade indicated that the lack of proper hygiene conditions in the African sections, the musekes, surrounding the town of Luanda, in particular in the poor neighbourhoods where the indigenous population was concentrated, had

39/ See paragraph 444 above.

caused a yellow fever epidemic in Luanda and a cholera outbreak in Luanda, Lobito and Benguela in 1971. Those epidemics did not affect the European population of the towns, but only the indigenous population which, because of racial discrimination, lived under unsanitary conditions (RT.141, page 26).

449 Mr. J. J. Caetano stated that the Sao Nicolao concentration camp in the Moçâmedes desert consisted of three parts. At Camp No. 1 the best conditions prevailed, at Camp No. 2 they were mediocre, while at Camp No. 3, they were bad. Camp No. 1 was reserved for European political detainees and assimilados, Camp No. 2 was reserved for assimilados who had committed minor offences, and Camp No. 3 was for the Natives (RT.141, page 41).

VI. CONCLUSIONS AND RECOMMENDATIONS

450. The Working Group submits hereunder the conclusions and recommendations arising out of its investigation in 1972 and requests the Secretary-General to transmit the same to the Ministers of Foreign Affairs of Member States.

A. SOUTH AFRICA

1. Conclusions

- (1) The Group had the modest satisfaction of hearing that, since it began its inquiries in 1967, the living conditions of political detainees in certain prisons in South Africa have slightly improved.
- (2) The Group nevertheless finds that inhuman and degrading treatment is still meted out, both at police stations and in prisons, to persons arrested solely by reason of their opposition to the South African Government's apartheid policy and detained under the retrograde laws based on apartheid which the Group has already studied.
- (3) While the number of executions has diminished, it should nevertheless be noted that non-whites are much more numerous than whites among those on whom sentence of death has been carried out; similarly the number of death sentences passed for a given crime, for example rape, is far greater among non-whites than the trifling number of death sentences passed on whites.
- (4) South Africa continues to hold the record for number of death sentences and number of executions.
- (5) The Group draws the Commission's attention to the inhuman conditions in which the inmates of "the condemned section" in the "hanging gaol" (Pretoria Central Prison) live.
- (6) Very often, or almost always, the South African judicial system rests content with the South African police's version of the cause of death where non-white persons die under suspicious circumstances in police stations. In the opinion of the Ad Hoc Working Group, these deaths occur as a result of the torture which is still used by the police.
- (7) One witness said that people did not dare to tell the truth about torture for fear of influencing the magistrates or judges.
- (8) The case of Rt. Rev. Winter is a striking example of persecution of a progressive human being. Rt. Rev. Winter spent all his savings in support of persons on trial and finally had to "flee" for fear of being imprisoned.
- (9) The Group draws the Commission's attention to the use of witnesses for the prosecution who are themselves held in solitary confinement and who appear in court without having had time to prepare their defence.
- (10) The "homelands" are no more than reservoirs of cheap black labour for white South African businessmen; they are over-populated areas consisting mainly of arid land. The "homelands" policy takes no account of the aspirations of local chiefs.

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Mining taxes are paid, not to the homelands authorities, but to the South African Government; conditions as to health, hygiene and education are bad.

(11) It is learned that the South African authorities are trying to institute a new system for dealing with offenders under the pass laws. First offenders are made available to white farmers as cheap labour, but recidivists are sent to the "homelands" or to transit camps. This new system may seem less revolting, but it is just as inhuman.

(12) The South African authorities are continuing their degrading policy of "resettling" persons described as "unemployable", "redundant" or "non-economically-active" (women, children and old people).

(13) The Group draws attention to the case of released political prisoners, who are sent to "resettlement camps" where they cannot find employment to maintain their families. These former political prisoners remain under police supervision and their freedom of movement is restricted.

(14) The policy of transferring African workers is being intensified; the workers are transferred under inhuman conditions, and the result of this policy is the prolonged separation of African workers from their families.

(15) The system of migrant workers is one of the grave manifestations of apartheid; it has repercussions on family life and on the behaviour of individuals.

2. Recommendations

(16) The Group reiterates its previous recommendations regarding the inhuman and degrading treatment suffered by persons arrested and detained solely because of their opposition to the South African Government's policy of apartheid.

(17) After every death in suspicious circumstances an inquest should be held.

(18) The Ad Hoc Working Group asks for a judicial inquiry to be held by the South African authorities into the death of Mr. Mthayeni Cutshela. Mr. Cutshela died after a long interrogation in Umtata prison and the death certificate was kept by the police.

(19) The Group recommends the international community to follow closely the various trials taking place in South Africa and draws attention to the trial of four Indians which began at Pretoria on 13 June 1972.

(20) The Group recommends that, in cases where persons arrested for opposing the policy of apartheid are in need of financial aid, international funds should be provided for the defence of the accused.

(21) The Group recommends that the new system of recruiting African labour from among offenders against the "pass" laws should be abolished outright.

(22) The Group recommends the abolition of all transit and resettlement camps.

(23) The Group recommends that released political prisoners should be allowed complete freedom of movement.

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(24) The Group recommends that the policy of transferring African workers and the policy of separating workers from their families should be discontinued forthwith.

(25) The Group recommends that witnesses for the prosecution should be treated as genuine witnesses and not as accused persons, and that they should in no case be detained in any manner whatsoever.

(26) The Group reiterates its previous recommendations concerning the so-called "homelands" policy.

B. NAMIBIA

1. Conclusions

(27) The transfer to South Africa of a large part of the powers and functions exercised by the Government of the territory was continued in the period 1970-1972.

(28) The Bantu Education Amendment Act No. 44 of 1970 gave the South African Government direct control over African education.

(29) The Coloured Persons in South West Africa Education Act No. 63 of 1972, the Basters of Rehoboth Education Act No. 85 of 1972 and the Nama in South West Africa Education Act No. 86 of 1972 transferred the control of education to the Department of Coloured Relations and Rehoboth Affairs.

(30) In Ovamboland (a) all meetings, gatherings and assemblies are banned; (b) the South African police and Native Commissioners have been given powers to arrest and detain any person suspected of having taken part or of having the intention to take part in any offence under the Proclamation; (c) no person arrested or detained is allowed, without the consent of the Minister, to consult a legal adviser; (d) entry to all prohibited areas is restricted.

Since March 1972 the measures taken under the State of Emergency have not been relaxed.

(31) The South African laws providing for capital punishment are still being applied in Namibia.

(32) According to witnesses, since the 1971-1972 strike the police have killed or wounded several persons taking part in meetings in various towns in Namibia. It was reported that several of those killed had been buried in common graves.

(33) According to a press statement issued by the Rt. Rev. Colin O'Brien Winter, Bishop of Damaraland, four men were killed by the South African police at Epinga on 30 January 1972 after the service at the Anglican church.

(34) The persons arrested in the Caprivi Strip were taken to South Africa and their homes burned down.

(35) According to two witnesses, several hundred persons are detained in prisons which have become too small; other arrested persons were therefore kept in camps surrounded by electrified barbed wire.

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(36) Some Namibian prisoners are detained on Robben Island, where they are maltreated and receive virtually no care.

(37) The relatives of prisoners are unable to communicate with them. Reference was made to the case of Mrs. Elizabeth Toive, an aged widow whose attempts to visit her son serving a term of life imprisonment on Robben Island had been repeatedly thwarted.

(38) The Group draws the Commission's attention to the case of Mr. Nathaniel Mahuilili, the Acting President of SWAPO, who has been placed under restriction under the 1950 Suppression of Communism Act.

(39) Persons arrested are subjected to the most cruel and degrading tortures both at police stations and in prisons. The case of the Rev. Olavi Nailenge was cited.

(40) The powers conferred on the police and the administration by proclamation leave those detained with no legal remedy.

(41) The trials following the strike were held in distant and inaccessible parts of Namibia.

(42) The Group draws the Commission's attention to the fate of Mr. Brendan Simbwaye, Vice-President of the South West Africa People's Organization, who was a teacher in the Caprivi Strip and is reported to have been removed from the south to the northern areas of the country.

(43) Under the Development of Self-Government for Native Nations in South West Africa Act, No. 54 of 1968, new measures have been adopted since the end of 1970 with a view to the establishment of so-called "homelands", namely:

(a) the Namaland Consolidation and Administration Act, No. 79 of 1972;

(b) the Bantu Laws Amendment Act, No. 23 of 1972.

(44) Since August 1972 the formal authorization of the South African Government has been required for entry to Eastern Caprivi.

(45) Schemes for the removal of populations are under way; for example, the Hereros are to be settled in the Kalahari desert. Regions are being broken up without regard to the unity of their inhabitants; the Kaokaoveld is an example.

(46) Progressive citizens of South Africa - for example Rt. Rev. Winter and three colleagues from his diocese - are being deported because of their opposition to the policy of the South African Government.

(47) The reason behind the Bantustan policy is, as Rt. Rev. Winter has stated, that a pool of African labour should be kept in semi-barren areas which can barely support the inhabitants confined there; furthermore this policy tends to destroy the unity of the Namibian people, to create clans, to perpetuate tribalism and to prevent any improvement in the lot of the population divided in this way.

(48) The mortality rate is very high.

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(49) The South African Government puts all kinds of obstacles in the way of education for the Namibians; even efforts by the Church have failed. Hundreds of black pupils have been expelled from the schools because of their opposition to South African policy. Schools are closed down on flimsy pretexts. Other pupils are subjected to corporal punishment before being barred from acceptance by any school in the territory.

2. Recommendations

(50) The Group recommends restitution of the powers and functions confiscated by the South African Government.

(51) The Group recommends the abolition of the State of Emergency in Ovamboland and of all measures taken under the Proclamation of the State of Emergency.

(52) The Group recommends South Africa to cease applying South African laws in Namibia.

(53) The Group recommends the opening of a judicial inquiry into the case of the persons who have been killed since the strike of 1971/1972.

(54) The Group recommends the opening of a judicial inquiry into the case of the persons who were killed at Epinga on 30 January 1972.

(55) The Group recommends that the inhuman and degrading treatment meted out to persons arrested or detained solely because of their opposition to South African policy in Namibia should be ended.

(56) The Group recommends that the persons arrested in the Caprivi Strip and deported should return to their homes.

(57) The Group recommends the abolition of the "concentration camps" which exist in Namibia.

(58) The Group recommends that the Namibian prisoners detained on Robben Island should be transferred to Namibia.

(59) The Group recommends that the trials of prisoners arrested for their opposition to South African policy in Namibia should be equitable and should conform to the provisions of article 14 of the International Covenant on Civil and Political Rights.

(60) The Group recommends that political detainees should be allowed to communicate with their relatives and their lawyers.

(61) The Group recommends that the United Nations should study the case of Mr. Nathaniel Mahuilili and that of Mr. Brendan Simbwaye.

(62) The Group recommends that it should be made possible to enter and leave the region of Eastern Caprivi freely.

(63) The Group recommends that the policy of removing populations and the policy of splitting up regions of Namibia should be discontinued forthwith in order to safeguard the unity of the Namibian people.

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(64) The Group recommends that the progressive Namibian citizens arbitrarily expelled from their homeland should be allowed to return freely to their country.

(65) The Group recommends that a watch should be kept over the education of young Namibians.

C. SOUTHERN RHODESIA

1. Conclusions

(66) According to testimony taken, several persons have been sentenced to death but have not yet been executed. According to Miss Todd, these persons will probably be executed as soon as the Rhodesian régime is recognized.

(67) According to certain witnesses, several persons have died in suspicious circumstances while in prison or in police custody.

(68) According to testimony taken, freedom fighters are summarily executed without trial on being captured by the Smith forces. Such freedom fighters have been summarily executed to avoid any court proceedings and publicity.

(69) After the Pearce Commission had been to Southern Rhodesia, the treatment of political prisoners worsened.

(70) Political prisoners are subjected to the most degrading and most inhuman treatment.

(71) The Southern Rhodesian authorities have enacted many laws and regulations incompatible with the provisions of the Universal Declaration of Human Rights.

(72) Particular mention should be made of the provisions of the Unlawful Organization Act, No. 55 of 1971.

(73) On 16 June 1972 the Rhodesian Parliament extended for twelve months the state of emergency and all regulations issued under it.

(74) There are three different categories of political prisoners in Southern Rhodesia (see para. 253 of the report).

(75) The policy of mass removals of population from fertile to arid regions continues. The case of the Tangwena tribe is still receiving the attention of international public opinion; this applies particularly to the more than 100 Tangwena children held as hostages in order to force their parents to leave the forests in which they had taken refuge when they were forcibly expelled from their traditional lands and their homes and possessions were burned by the police.

(76) While the Pearce Commission was in Southern Rhodesia, several persons are reported to have been arrested and, according to testimony taken by the Group, pressure was brought to bear on African personalities, especially the chiefs.

(77) Reference should be made to the increasingly close co-operation instituted between the South African and Southern Rhodesian police.

/...

2. Recommendations

(78) The Group recommends that the Government of the United Kingdom, as the administering Power, should intercede with the Southern Rhodesian authorities and should take up the case of persons sentenced to death who have been held in detention for very long periods.

(79) The Group recommends that the United Kingdom, as the administering Power, should institute a judicial inquiry into the deaths which have occurred in suspicious circumstances in prisons or at police stations.

(80) The Group recommends that the United Kingdom, as the administering Power, should institute an inquiry into the summary execution of freedom fighters captured by Ian Smith's forces.

(81) The Group recommends that the inhuman and degrading treatment inflicted on political prisoners should be ended.

(82) The Group recommends that the United Kingdom, as the administering Power, should repeal all laws promulgated by the illegal Ian Smith régime which are contrary to international rules.

(83) The Group recommends that the United Kingdom, as the administering Power, should invite the Southern Rhodesian authorities to let the Tangwena people return to their ancestral home; it recommends that the children should be returned to their parents without delay.

D. AFRICAN TERRITORIES UNDER PORTUGUESE DOMINATION

1. Conclusions

(84) Captured freedom fighters and families of freedom fighters are subjected to brutal, inhuman and savage methods of torture. Examples are: the captured men are maimed and forced to eat parts of their bodies. Their wives are raped in their presence and killed. Aged parents are tortured and murdered and their flesh is offered as food. These barbarous repressive measures continue unabated.

(85) Families are uprooted from their traditional villages and settled in "strategic centres" and "peace camps". These are nothing but concentration camps surrounded by barbed wire fencing. Living and working conditions for the Africans in these camps are deplorable. Diet supplied is at starvation level and medical and sanitary facilities are non-existent. Few are the educational facilities for the children. Africans in these camps are not only brain-washed but also kept under constant fear of death.

(86) Political prisoners undergo worse experiences. Prisons are still primitive. Solitary confinement in narrow space is a frequent occurrence. Dietary conditions are most unsatisfactory. Captured guerillas face worse treatment. No trial is held and they are summarily shot after undergoing unspeakable torture.

(87) Villages suspected of having given shelter to guerillas or knowing the movement of freedom fighters are decimated en masse. Massacres and killings of black Africans have taken place in approximately one-third of the Tete District in

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Mozambique. For the construction of the Caborra Bassa dam thousands of persons were evicted from their ancestral homes, to make room for white immigrants.

(88) In a few instances captured persons belonging to liberation movements are sent to Portugal to face trial or may be sent to islands far from Mozambique and Angola, e.g. the Cape Verde Islands. These prisoners experience untold suffering and agony in crowded prisons deprived of elementary amenities.

(89) Chemical warfare is carried on with the use of helicopters and light planes, including those from South Africa, to terrorize the people in the liberated areas.

(90) Napalm, defolients, herbicides, chemical agents, etc. to harm human and plant life are widely used. The object is to strike terror into the people and destroy their food crops. According to some witnesses who could not give any patent proof to the Group, some of the bombs and poisonous chemical substances are believed to have been supplied by certain West European countries. This method of halting the advance of the liberation forces has seriously affected and undermined the health of the inhabitants in the liberated areas, as evidenced by the increase in the number of reported cases of diseases in 1971 as compared to 1969.

(91) Racial discrimination is practised widely. The majority of rural Africans are forced to subserve the interests of the white administration. There are separate churches for the black and the white Africans. A system of identity cards has been introduced, different for the rural Africans, in order to curb their free movement and in practice to perpetuate racial discrimination. These Africans are denied better jobs. Forced labour still continues.

(92) Captured freedom fighters of South Africa are handed over to the South African police. In this connexion the Working Group heard testimony about the illegal action of the Portuguese authorities in handing over Mr. Marcus Mokgotle and Mr. Sidney Mbuyaze, members of the Pan-Africanist Congress who were in occupied areas of Mozambique. (However, the Group must point out that the South African Government continues to deny that Mr. Marcus Mokgotle is in the custody of the South African police). The co-operation between the Portuguese and South African police leads in fact to an association between the two police forces, in furtherance of their racist policies.

(93) The conditions for Africans in Angola and Mozambique in all spheres show marked deterioration. Discrimination, oppression and exploitation are still the lot of Africans who are under Portuguese domination.

(94) The Government of Portugal continues to threaten the independent African countries neighbouring on Mozambique and Angola.

(95) The Ad Hoc Working Group of Experts welcomes the decision taken by the national liberation movements in Angola to form a united front in order to wage their struggle against oppression; this is a step which the Group has hoped for and recommended ever since its inception.

2. Recommendations

(96) The Group recommends that uprooting of Africans in Angola, Mozambique and Guinea (Bissau) should stop.

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(97) The Group recommends that the "strategic centres", "peace villages" or ndandandas should be abolished and freedom of movement restored to the people.

(98) The Group recommends that retaliatory action against families of freedom fighters and against their women and children should cease.

(99) The Group recommends that political prisoners and detainees should be treated in a humane manner and be brought to fair trial in accordance with the Universal Declaration of Human Rights.

(100) The Group recommends that aerial bombardment of, and use of poisonous chemical substances in, the liberated areas should stop and that the Security Council should take relevant measures accordingly, and in this respect demands that no State give help to the Government of Portugal.

(101) The Group recommends that moral and material assistance to the liberation movement and the liberated territories and their populations should be extended in full scale, in particular by the United Nations organs and specialized agencies.

(102) The Group recommends that international pressure should be applied on Portugal so that captured freedom fighters are treated as prisoners of war under the Geneva Conventions, as multiple resolutions of the United Nations bodies and the preparatory work of the ICRC have requested.

(103) The Group recommends that the Government of Portugal show to delegates of the ICRC the real conditions of detention camps and prisons where political prisoners and freedom fighters are detained in African territories under Portuguese domination; the Group recommends to invite the ICRC to submit to the Commission on Human Rights reports on its visits to prisons and detention camps where political prisoners and freedom fighters are detained, to the extent that its statute permits; and recommends to carry out on-the-spot studies of the conditions of prisons and report to the concerned United Nations bodies.

(104) The Group recommends that discriminatory practices against the Africans in rural areas in all spheres should be removed.

(105) The Group recommends that the prevailing unjust wage system operating against Africans in rural areas should be brought to an end.

(106) The Group recommends that all efforts should be made to ameliorate medical care for the refugees.

(107) The Group recommends that the Government of Portugal cease its threats and attacks against independent African countries neighbouring on Mozambique, Angola and Guinea (Bissau).

VII. ADOPTION OF THE REPORT

451. This report has been approved and signed by the members of the Ad Hoc Working Group of Experts, namely:

| | | |
|--|-------------------|-------------|
| Mr. Ibrahima Boye, Chairman and Rapporteur | (<u>signed</u>) | (illegible) |
| Mr. Felix Ermacora | (<u>signed</u>) | Ermacora |
| Mr. Branimir Janković | (<u>signed</u>) | (illegible) |
| Mr. A.S. Mani | (<u>signed</u>) | A.S. Mani |
| Mr. Luis Marchand-Stens ^{1/} | | |
| Mr. M.N. Rattansey | (<u>signed</u>) | (illegible) |

^{1/} Mr. L. Marchand-Stens was unable to attend the meeting.

ANNEXES

Annex I

A. OPENING STATEMENT MADE BY MR. IBRAHIMA BOYE, CHAIRMAN OF THE AD HOC WORKING GROUP OF EXPERTS, AT THE 296TH MEETING OF THE WORKING GROUP HELD AT DAR ES SALAAM, UNITED REPUBLIC OF TANZANIA, ON 9 AUGUST 1972

Mr. Minister,

Permit me to thank you, on my own behalf and on that of the Group of Experts and the Secretariat, for the warm welcome which your Government has extended to us.

This does not surprise us, knowing as we do of your Government's interest in the cause of African unity - a unity which will not be fully achieved until all African Territories are free to determine their own destiny.

I take pleasure in paying a special tribute to your great leader, President Julius Nyerere and to his colleagues, who have a deep and sincere love for Africa. Would you be good enough, Mr. Minister, to convey to them our expression of appreciation for all the facilities that have been made available to us.

Your representatives in international bodies have steadfastly and unfailingly defended the cause of the national liberation movements.

This is, perhaps, the place to say that we know that your Government and your people do not shrink from any sacrifice in order to help the Africans who are still under colonial domination to recover their dignity as men and their right to determine freely their own destiny.

The United Nations, in which your State is one of the influential Members belonging to the third world group, is trying by various means to eliminate the consequences of colonialism in Africa and, above all, to restore the legitimate rights of the peoples of Azania, Namibia, Zimbabwe, Angola, Mozambique, Guinea (Bissau) and the Cape Verde Islands.

We are often called upon to state what the United Nations has done specifically thus far to solve the agonizing problems that exist in Africa.

Of course, it is quite often forgotten that the United Nations is an association of Member States and that it is for those Member States to assume their full responsibilities in order to ensure the strict implementation of the provisions of the Charter. The success of the United Nations is the success of its Member States; the failure of the United Nations is the failure of its Member States.

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None the less, as far as we are concerned we shall spare no effort to make available to the international community the substantial body of objective material which we will assemble during our travels and thus enable the international community to take the decisions which are authorized under the Charter.

We are independent non-governmental experts, and our investigations and reports have up to now made it possible to assemble a great deal of evidence which we have submitted to the United Nations.

It was most encouraging to us to hear recently that, since the establishment of our Group in 1967, the living conditions of political prisoners in South Africa have improved somewhat. This was told to us by former prisoners who had recently left South Africa. Let us make no mistake about it, however: the language still being spoken by Vorster is not the language that the United Nations would like to hear. Let us not deceive ourselves: the laws of apartheid, the discriminatory laws in Southern Rhodesia and in the African Territories under Portuguese domination are still in force and are still being applied rigidly and harshly.

We therefore draw the attention of States Members of the United Nations to this situation, but we also call upon the national liberation movements to help us help them, to present a united front in order to face effectively the flagrant and shameful provocations of the racist régimes which exist in their lands.

I believe that if all efforts are sincerely co-ordinated we shall ultimately drive away these massive clouds which still prevent Africans from seeing at last, in a serene blue sky, the radiant sun of freedom, equality, dignity and brotherhood with all the peoples of the world.

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B. STATEMENT MADE BY H.E. MR. I. ELINAWINGA, MINISTER FOR WATER
DEVELOPMENT AND POWER, ACTING MINISTER FOR FOREIGN AFFAIRS
OF THE UNITED REPUBLIC OF TANZANIA

Mr. Chairman, it is a great honour for me to take this opportunity to welcome you here on behalf of our Government, our two parties - TANU and Afro-Shirazi - as well as the people of Tanzania. I have no need of emphasizing the great importance Tanzania attaches to your visit here. This is for obvious reasons. Your Committee, composed of such high ranking personalities and scholars in the field of human rights, should make a serious contribution towards making the world better for those unfortunate human beings who are still being deprived of even their fundamental rights. The subject that you are going to discuss here is closely linked to the question of colonialism and the problem of apartheid, the two greatest plagues that still in this twentieth century afflict humanity in our continent. Having these evils breeding on our borders we in Tanzania count it a very great privilege to welcome you here.

During your short stay here you will listen to a number of petitions and testimonies from people who have not only been refused their basic human rights in the economic, social and cultural fields, but have also been deprived of their fundamental right to live in their motherland. Thus, being the victims of discrimination, oppression and injustice because of their differences of race, colour or religion, they run away in order to secure an audience in the world. This situation is particularly pronounced in South Africa. Thus, being the victims of outmoded systems of colonialism, they run away in order to be able to exert themselves and be heard. This is the situation in the Portuguese colonies of Mozambique, Angola, Guinea (Bissau), and in Zimbabwe as well.

Since the early days of the independence movement, Tanzania has been fully committed to the right of all to human dignity and freedom, and since then our independence has been based on the observance of those principles. Tanzania has consistently deplored the wicked acts of discrimination and racialism committed by fascist régimes of South Africa, Rhodesia, and Portugal against the indigenous peoples of those Territories who have been fighting for a long time for their self-determination. With this in mind, Tanzania has great confidence in the work of the Committee, which it has been carrying out for the past few years. We hope that the petitions which are going to be presented by the liberation movements and by various individual witnesses will meet with the sympathy of this Committee for further deliberations in other committees of the United Nations.

The entire world is now well aware of the sufferings, tortures of all sorts, and human degradation which human beings are being exposed to by the oppressive régimes in southern Africa. It is the duty of humanity, therefore, to strongly oppose these wicked acts and to condemn heavily all racial segregation and apartheid. We in Tanzania therefore already believe that it is up to an oppressed people to choose the most effective means to combat their oppressors. We therefore believe that the struggle in Africa and in the whole world to eliminate these evils is a legitimate struggle, even if it means by force of arms.

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It was needless to repeat here to a Committee like yours the fact that racism and colonialism already constitute a breach of international law. These practices already violate the United Nations Charter, the United Nations Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. Your Committee was no doubt instrumental in the preparation of these instruments, which are now building really humane international norms. In summary, colonialism and racialism constitute a flagrant violation of international law. Moreover, they constitute thereby a threat to world peace and security.

In this connexion allow me to quote from the 1965 International Convention on the Elimination of All Forms of Racial Discrimination in which it is stated that:

"Any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and there is no justification for racial discrimination, in theory or in practice, anywhere."

To continue with the quotation, it says, further that:

"Discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations, and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State."

Mr. Chairman, your Committee being a group of experts I know that its mandate makes its task go deeper than my general observations here. It is a pity, therefore, that you cannot be allowed to visit the Territories in question, namely, South Africa, Zimbabwe, Mozambique, Angola, Guinea (Bissau), and even Namibia, a Territory under the direct responsibility of the United Nations, for it is there that you could see evidence of people being held in police custody, detention and concentration camps, Native Reserves and the so-called Transit Camps. It is there that you could then properly evaluate the punishment meted out in revenge against political prisoners, and the illegal arrest and arraignment of innocent workers on strike and of captured patriotic freedom-fighters. It is after such a thorough search that you could later be able to apprise the entire Commission on Human Rights of the over-all conditions of Africans in these lands, which could later on be again thoroughly examined by the General Assembly. Though this is not possible, the world already knows what is happening in these Territories. Information is trickling out, and this should help your deliberations here. The colonialists and the racists in southern Africa cannot go on indefinitely hiding a decaying carcass. We in Tanzania, therefore, will do everything that is within our power to facilitate your work.

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We in Tanzania, therefore, strongly believe that the early and peaceful remedy to these racial evils now obtaining in the Portuguese colonies of Angola, Mozambique and Guinea (Bissau), in Zimbabwe, in Namibia and in South Africa is the granting of independence to these countries.

Mr. Chairman, it is obvious, therefore, that racial barriers are incompatible with the ideals of any human society. You, as a committee entrusted with powers to combat these evils, have a great responsibility to the Governments concerned to stop policies of apartheid, segregation and separation. We believe, therefore, that the most effective way to combat racialism and colonialism is to redouble national and international action for the complete emancipation of the African continent, for the elimination of apartheid, in South Africa, for the freedom of the people of Namibia, and for the ending of the colonial wars in the Territories under Portuguese domination and in Zimbabwe. A contribution to these ends by a committee like yours cannot be over-emphasized.

Mr. Chairman, I have no doubt that, as you listen to or interview the various witnesses, even simple individuals, you will certainly bear in mind these global objectives. For human rights cannot flourish in a colonial situation or in the land of apartheid. The existence of these systems is already a negation of human rights. Sooner or later, however, I am convinced, racism will be something of the past. I can assure you that when that stage of human civilization is reached your Committee will have contributed no mean part to that end. Whatever you accomplish, therefore, even in a matter of a few days, will definitely contribute to that end.

Mr. Chairman, let me reiterate once again that you are warmly welcome in Tanzania, and I ask all of you to feel at home and feel absolutely free during your stay here. To this end, I wish you all the best of luck in your important deliberations and in combating and eliminating the social injustices of all forms that some of our brothers and sisters are suffering in still-colonized Territories on our continent.

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Annex II

STATEMENT MADE BY H.E. MR. NDENGUE, MINISTER OF LABOUR AND
JUSTICE OF THE PEOPLE'S REPUBLIC OF THE CONGO,
ACTING MINISTER FOR FOREIGN AFFAIRS

On behalf of the Congolese Labour Party and its Chairman, Comrade Marien Ngouabi, I wish to thank you for paying us this visit and to tell you how happy we are to welcome you to our capital. We very much appreciate the mission which the Secretariat is undertaking - a mission which is closely related to the struggle being waged by the Congolese people for national liberation; this struggle falls within the over-all context of the Congolese people's struggle against foreign occupation inasmuch as we want every country to be able to enjoy full freedom and independence in order to assert itself as a free country in the eyes of the world.

As to the people's contribution to the liberation movements, we are not yet entitled to claim that we have done more, in view of the limited means of our people and Government, but we believe that our people have a duty to help the national liberation movements because - as you have just pointed out - although the Congo is independent, we cannot rest on our laurels so long as any part of Africa remains under colonial domination.

Consequently, in conformity with the policy enunciated by President Marien Ngouabi before national and international bodies, and just recently at the Conference of Heads of State in Morocco, we believe and affirm that the Congolese people's struggle is not limited to national matters but is international in scope inasmuch as we must do everything in our power to help those peoples still under colonial domination in their struggle against the occupier to attain their independence.

So far as the question of negotiating with South Africa is concerned, therefore, we feel that, as long as the rights of the indigenous people of South Africa are ignored, we cannot sit down at the conference table with those who do not recognize the freedom and personality of inhabitants of South Africa. There is no question of our Government's agreeing to any form of negotiation whatsoever with South Africa.

This applies equally with regard to the peoples of Angola and Guinea (Bissau). We shall continue to support them in their struggle for national liberation because we consider that, in order to ensure genuine peace in the world, the peoples must exercise self-determination; not until every people has its independence and is able to take decisions free from outside influence can we accept any form of peace in the world.

I therefore welcome your presence here since, as I have just said, your mission is closely related to the struggle which our people are waging against the occupier. Our Government is ready and willing to provide you with whatever you need in order to carry out your task in our country.

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I agree with you, Mr. Chairman, that confronted as they are with a common enemy, the national liberation movements have everything to gain by forming a single front to fight against that enemy. You will recall that two months ago our country welcomed the Angolan liberation movements - MPLA and FNLA - in pursuance of the mission which OAU had assigned to our Heads of State. These two movements met in our capital, with President Mobutu Sese Seko of Zaire and President Marien Ngouabi of the People's Republic of the Congo participating, to promote and encourage such unity of action, so that they may join together in order to carry their struggle forcefully to the Portuguese occupier.

Annex III

STATEMENT MADE BY H.E. MR. KARL-I-BOND NGUZA, MINISTER FOR
FOREIGN AFFAIRS OF THE REPUBLIC OF ZAIRE

Mr. Chairman - I am strongly tempted to say Mr. Ambassador, dear colleague and dear brother - before I answer your question it is clearly my duty as Minister for Foreign Affairs - although I am somewhat late in performing it - to welcome the members of the Ad Hoc Working Group of Experts of the Commission on Human Rights. I should first of all like to tell you that the Government of Zaire, for special reasons of its own, follows with close attention everything that happens in the United Nations, particularly with regard to decolonization.

I should also like to inform you that the Government of Zaire has so far followed with great interest the work which you have been doing not only in the context of decolonization but also in other contexts - in that of the Middle East, for example - in an effort to find humanitarian solutions to human problems. In making this preliminary statement I wish to tell you that the Republic of Zaire, just as much as all other African countries, attaches great importance to the problems of the decolonization of Africa because it is experiencing these problems at its own frontiers. You have referred to the problem of Angola; we have a special, direct and physical experience of this problem, and I am therefore very happy about the highly productive work which your stay at Kinshasa has enabled you to do. I was also very happy to learn that despite my absence - I was visiting Gabon with the President - our colleagues who remained in Zaire have done everything they could to make your stay an agreeable one.

As to the specific problem of Angola, you know that, apart from India, the Republic of Zaire has more refugees than any other country in the world. We have refugees from the Sudan, refugees from Rwanda, refugees from Burundi and even a few refugees from Zambia, but a great many refugees are our brothers from Angola. There are approximately 700,000 of them at the present time. These refugees are spread over several regions of the Republic of Zaire, but many of them are at Kinshasa. For the past few years the Government of Zaire has provided shelter for the Revolutionary Government of Angola in Exile, led by Mr. Roberto Holden; and, as you know, it is not only allocating sizeable resources to provide combat matériel for the liberation of our brothers in Angola, but is also tackling the important task of solving their social problems. Whole neighbourhoods have been placed at their disposal; a hospital has been completely made over to them. Resources are allocated for education; Angolan students are included without discrimination, alongside their Zairian fellows, in the government scholarship programme. Moreover the efforts which the Government of Zaire is making in the budgetary sphere are not confined to social matters - in other words health and education, to which I have just referred - but also extend to employment. The aim here is to provide Angolans with decent work so that they can lead a decent life just as though they were themselves Zairians. This is a matter of integration provided for in the government budget.

The biggest item, however, is the military effort. The general staff has placed the Kinkoso base, which belongs to the Zairian armed forces, entirely at the disposal of the Angolan combatants. Military equipment and training facilities have been made available to them and the Zairian armed forces are entirely at their disposal to instruct and assist them in the use of equipment.

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I think your question should be looked at in the context of this effort which the Government of Zaire has been making for some time; this is a general problem of the struggle against colonialism. Our Government is determined to assist not only Angola but also the other African territories, in particular Guinea (Bissau) and Mozambique. Just recently, on his visit to Guinea, the President of the Republic publically promised President Sekou Touré that in the event of difficulties with regard to Guinea (Bissau) he was prepared to place Zairian armed forces at the disposal of the Guinean Government - and indeed of any Government encountering similar difficulties with regard to Guinea (Bissau) - in order that a concerted military solution may be reached. Why a military solution? When there is no other solution, when Portugal is content to let the resolutions pile up at the United Nations, there is no way out but to use force. The same applies to the Rhodesian problem and to that of apartheid. Our Government, in its devotion to Africa, now espouses the views of the Organization for African Unity on the subject and, in a specific and practical manner, is rendering them large-scale assistance through its budget and by providing the fighting forces of Angola with what they need for their struggle. The national radio, the Voice of Zaire, is at the disposal of our Angolan brothers at any time, and they use it to make important broadcasts as part of their campaign.

That, I think, in general terms, is how the problem can be understood from the Zairian Government's point of view.

At its eighth summit meeting, held at Addis Ababa last year, OAU instructed President Ngouabi of Brazzaville, President Nyerere of Tanzania, President Kaunda of Zambia and our President to do everything in their power to combine the strength of MPLA - both political and military - with that of GRAE. In response to that appeal President Mobutu Sese Seko went to Brazzaville and conversations were held between the two Presidents and the two leaders of MPLA and GRAE. On one side were ranged President Mobutu Sese Seko and Mr. Augustinho Vaal Neto, and on the other President Ngouabi and Mr. Roberto Holden. The negotiations were carried on in a very frank atmosphere; everything that could be said was said around that table and, very fortunately, the conclusion was reached that the two parties shared a sincere desire to unite their political and military forces. The communiqué signed by the two Heads of State present set the seal of authority on that desire of the two parties.

The problem remaining to be solved was that of the practical means of uniting the two movements: in other words, of establishing a single general staff and a single political authority. The arrangement was that this problem would be solved in subsequent negotiations between the two parties, with the co-operation of the delegations of the Governments appointed by OAU. Since the necessary political will was expressed in the presence of witnesses, in this case Heads of State, it now remains for us to take the initiative in meeting again in order to find ways and means of achieving such unification. I therefore believe that a solution to the problem has, at least in principle, been found.

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The Government of Zaire has, I may say, been deeply gratified by these results, because it is very difficult for forces fighting for the same cause if they align themselves on different fronts and do not share the same principles of combat, when their cause is the same. I think you will also understand that we would have liked all the forces present in the Republic of Zaire for the purpose of fighting in Angola to defend principles of unity and not principles of disunity, which would be a source of insecurity for our peoples.

I believe that the solution which was reached at Brazzaville is very satisfactory not only to our Government but also, as we have found, to all the Governments represented in OAU.

Annex IV

LETTER DATED 23 AUGUST 1972 FROM THE
AD HOC WORKING GROUP OF EXPERTS
ADDRESSED TO THE CHAIRMAN OF THE
COMMISSION ON HUMAN RIGHTS

Sir,

On behalf of the Ad Hoc Working Group of Experts of the Commission on Human Rights, established under Commission resolution 2 (XXIII) of 6 March 1967, I have the honour to draw your attention to certain items of information concerning recent developments in Namibia which have been brought to the Group's notice during the mission of inquiry it has just carried out in Europe and Africa in order to collect testimony on serious violations of human rights in southern Africa and in territories under Portuguese domination in accordance with the terms of reference laid down for it by the Commission.

First, with regard to the attainment of independence by Namibia, the attention of the Ad Hoc Working Group has been drawn to the contradiction between possible independence as conceived by the South African Government and the independence aimed at by the national liberation movements and the United Nations. For the South African Government, independence would mean the establishment of Bantustans on the South African model, whereas for the liberation movements independence would mean founding a State constituted on the basis of universal suffrage for all inhabitants in complete equality.

Moreover, according to information given to the Group by qualified representatives of certain liberation movements such as the South West African People's Organization (SWAPO), and by eminent personalities such as Rt. Rev. Colin Winter, the Bishop of Damaraland, the situation in Namibia has substantially worsened.

It has inter alia become quite clear to the Ad Hoc Working Group, from the testimony it has heard, that many arrests were made in Namibia as a result of the demonstrations which marked the Secretary-General's visit, in particular on his arrival at Windhoek airport. It has also been revealed that the repressive measures practised against Namibians who call for the withdrawal of the Government of South Africa from Namibia, far from being relaxed, were further intensified after his visit. The Ad Hoc Working Group has been informed that, in the circumstances, the open struggle for the liberation of Namibia from the South African yoke should be actively pursued and that, if any dialogue should develop with the South African authorities, the crucial question - indeed the only question that should be asked - is whether South Africa is truly and unconditionally prepared to withdraw from the territory, and to do so as soon as possible.

His Excellency
Mr. Eugeniusz Kulaga
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations
Permanent Mission of the Polish People's Republic to the United Nations
9 East 66th Street
NEW YORK, N.Y. 10021

/...

The report which the Ad Hoc Working Group of Experts will submit to the Commission on Human Rights at its next session, in February 1973, will give full details on all these points. The Group deemed it desirable, however, to draw your attention to the foregoing without delay, for information and action as appropriate.

A cable, a copy of which is attached, has just been sent to the Secretary-General.

Accept, Sir, the assurances of my highest consideration.

Ibrahima Boye (Senegal)
Chairman of the Ad Hoc Working Group of Experts
of the Commission on Human Rights

Annex V

CABLE DATED 23 AUGUST 1972 FROM
THE AD HOC WORKING GROUP OF EXPERTS
ADDRESSED TO THE SECRETARY-GENERAL

His Excellency
Mr. Kurt Waldheim
Secretary-General of the United Nations
UNATIONS, New York

Pursuant to terms of reference laid down by Commission on Human Rights, Ad Hoc Working Group of Experts has collected important information on situation following your visit to Namibia. When we have studied all the records of testimony taken we shall send you as soon as possible, and in any case within first fortnight in November, detailed letter on the facts reported to us by the witnesses.

Ibrahima Boye (Senegal), Chairman
Ermacora (Austria), Janković (Yugoslavia),
Mani (India), Marchand-Stens (Peru),
Rattansey (United Republic of Tanzania),
members of the Group